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Professor Scott

PUDM 4045 B

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### Week 10 Assignment

Do the following problems and for each state in separate paragraphs: a) a summary of the facts, b) the legal issues involved, c) your analysis of the case and d) your conclusion

Pg. 246, problems 13–1 and 13–2

#### #13–1: Liquidated Damages

Carnack contracts to sell his house and lot to Willard for \$100,000. The terms of the contract call for Willard to make a deposit of 10 percent of the purchase price as a down payment. The terms further stipulate that if the buyer breaches the contract, Carnack will retain the deposit as liquidated damages. Willard makes the deposit, but because her expected financing of the \$90,000 balance falls through, she breaches the contract. Two weeks later, Carnack sold the house and lot to Balkova for \$105,000. Willard demands her \$10,000 back, but Carnack refuses, claiming that Willard's breach and the contract terms entitle him to keep the deposit. Discuss who is correct. (See Damages.)

- a) Willard has a contract with Carnack to buy Carnack's house and lot for \$100,000.

According to the contract Willard has to pay 10% of the purchase price as a down payment. If Willard breaches the contract, Carnack will keep the deposit as liquidated damages. Willard breaches the contract because her expected financing of \$90,000 balance falls through. Two weeks later, Carnack sells the house and lot for \$105,000 to

Balkova. Willard wants her \$10,000 back but Carnack says that she had breached the contract.

- b) A liquidated damages clause specifies a predetermined amount of money must be paid as damages for failure to perform under a contract. While liquidated damages provisions can have advantages, they are not always enforceable. If the predetermined amount of damages ends up grossly disproportionate to the actual harm suffered, courts will refuse to enforce the provision on the grounds that it is a penalty instead of an estimate of actual damages.
- c) Carnack has the full right to keep Willard's \$10,000 as there was a breach of contract. Willard was supposed to buy Carnack's house and lot for \$100,000 but was unable to make the payment because of an issue on Willard's end. Therefore, Willard had to back out but the down payment was already made so that money now belongs to Carnack. There was a clear breach of contract.
- d) Carnack sold the property to Balkova for a higher cost than he was going to sell it to Willard and he was able to keep Willard's \$10,000. This played out really well for Carnack, he made a \$15,000 profit which is great for him but also upsetting for Willard. However, there was a clear breach of contract and nothing can be done as Willard signed off on what she was doing. Carnack is entitled to the \$10,000.

#### #13–2: Mitigation of Damages

Lauren Barton, a single mother with three children, lived in Portland, Oregon. Cynthia VanHorn also lived in Oregon until she moved to New York City to open and operate an art gallery. VanHorn asked Barton to manage the gallery under a one-year contract for an annual salary of \$72,000. To begin work, Barton relocated to New York. As part of the move, Barton transferred custody of her children to her husband, who lived in London, England. In accepting the job, Barton also forfeited her husband's alimony and child-support payments, including unpaid

amounts of nearly \$30,000. Before Barton started work, VanHorn repudiated the contract. Unable to find employment for more than an annual salary of \$25,000, Barton moved to London to be near her children. Barton filed a suit in an Oregon state court against VanHorn, seeking damages for breach of contract. Should the court hold, as VanHorn argued, that Barton did not take reasonable steps to mitigate her damages? Why or why not? (See Damages.)

- a) Barton, a mother of three children is about to move to New York City from Oregon for work. VanHorn is also from Oregon but moved to New York City to open an art gallery with Barton. Barton was hired by VanHorn to manage the gallery in New York City and have an annual salary of \$72,000. When Barton moved to NYC she transferred her custody of the three kids to her husband and also gave up her husband's alimony including child-support payments that totaled up to around \$30,000. However, right before Barton was to start VanHorn took back the contract. Because of the sudden change, Barton was also unable to find a job that would pay her more than \$25,000 annually. Barton moved to London to be with her kids but filed a suit in Oregon against VanHorn for a breach of contract.
- b) There are four types of damages. Mitigation of damages is a contract law concept that requires that a victim in a contract dispute minimize the damages that result from a breach of the contract. This means that the victim is legally obligated to act in a manner that will mitigate both the effects of the breach and their own personal losses and even if the victim who suffers a personal injury through no fault of his or her own has an obligation to take reasonable steps to avoid further loss and to minimize the consequences of the injury. Compensatory damages are money awarded to a plaintiff to compensate for damages, injury, or another incurred loss. Compensatory damages are awarded in civil court cases where loss has occurred as a result of the negligence or

unlawful conduct of another party. Incidental Damages are damages that compensate for expenses directly incurred because of a breach of contract. Finally, the consequential damages is the foreseeable damages that result from a party's breach of contract but are caused by special circumstances beyond the contract itself.

- c) Out of all of the damages, Mitigation of damages applies to this specific case. Because of the mitigation of damages, the court will help Barton find employment that would be on par with what VanHorn would be offering. If Barton is unable to find a job that is paying her enough, VanHorn has the right to pay the difference. This would help minimize the damage.
- d) VanHorn did not have the right reason to breach the contract so she is completely guilty of what has happened with Barton. Barton gave up a lot to move to New York City with the full hope of everything going smoothly. Now that it has not, VanHorn should and will take responsibility for her actions. Breach of contract is taken seriously and this a clear case of one.