

PART II

ESSAY QUESTION (95 Minutes; three subparts)

American Women's Foundation for Urban Living (AWFUL) rents its office space and raises money to support its efforts. Bea Wealthy was an architect with a high regard for AWFUL who told their leadership that she would build an office building of her own design her lot across the street from her two million dollar mansion and give the new building to AWFUL when it was completed. They expressed their delight at her generosity and stated that they would name the building after her.

She drew up the plans and sent them to Sam Plan, a contractor that she knew and trusted, asking him how much he would charge to construct the building. Sam emailed Bea to say that he could build the building for about \$1.5 million, admitting he would make about \$300,000 at such a price.

Bea responded on September 1, "I will pay you \$1.5 million to construct an office building on my property according to the plans you have received from me. Given the value of the land, I will be making a gift worth two million to AWFUL for which I am sure they will be eternally grateful. In fact, they've said they will name the building after me. Bea Wealthy."

Sam replied to Bea with a letter stating "I accept your offer and will begin work immediately. Of course the usual terms in these contracts apply, with payment \$300,000 when the foundation is completed and \$300,000 every other month thereafter if progress is satisfactory to you. Sam Plan."

Bea then left for a long planned two week vacation in Finland. Sam moved his tractor and other equipment to Bea's land and began to grade the property to provide for a foundation. In September of 2005 weather forecasters warned of a major hurricane headed toward the state. Concerned that his work might be lost and Bea's house injured by the gale, Sam piled up the earth on the site to form a protective wall against the predicted winds and water. The hurricane hit on September 11. The wall sheltered Bea's property from damage, but the accompanying rain soaked the earth and it gave way. The tractor-bulldozer at the top of the mound toppled down the hill. The accident bent the tractor wheels and the drive shaft and made it impossible to use.

When the hurricane passed, Bea wrote Sam. "I have been away since we last talked. Thanks to you, my house is still in one piece, but my business has been destroyed. The city has been so devastated that it needs basic services and infrastructure rebuilding instead of new buildings and cultural refinements. An office for AWFUL under these circumstances would be a waste of money, so I won't go ahead with it. None of your excavation work is of any use after this hurricane anyway. Besides you can't do the excavation now that your tractor is broken. However, I am really grateful, and I will pay you \$300,000 for what you have done to preserve my home. Bea Wealthy."

Sam borrowed \$250,000 from Foolish Finance (FF) to purchase a new bulldozer to take advantage of the opportunity to rebuild the city after the hurricane, giving them a note, secured by a lien on the bulldozer and an assignment of the promise of \$300,000 from Wealthy.

The stress of trying to revive her business was one of the pressures that led to a heart attack and Bea's death in October. Her administrator, "Skinny" Jack Flint, has refused to pay Sam anything and will not give AWFUL any money or land. Sam notified Flint that he should pay FF, but Flint refused to do that as well.

A.

AWFUL has brought suit against Flint as executor of Wealthy's estate for specific performance of Bea's commitment to build the office and give it the property, or in the alternative, for the \$2 million value of the office and land Bea had promised to them. What are the issues and arguments in this suit? Discuss.

B.

Sam Plan has filed suit against Flint for breach of Wealthy's contract to employ him to construct the building. He claims damages of \$325,000 consisting of \$25,000 costs for labor and equipment used on the job until the point she notified him she was not going to give the office to AWFUL, and \$300,000 in lost profits. What are the issues and arguments in this suit? Discuss.

C.

Foolish Finance filed suit against Flint as assignee of Sam Plan for Flint's refusal to honor Wealthy's promise to pay Plan \$300,000 in recognition of his efforts that saved her house from storm damage. What are the issues and arguments in this suit? Discuss.