

## Essay Question No. 4

### Answer this question in booklet #4

The Windsor Racquet Club, a national chain of indoor tennis clubs, is interested in opening a facility in Anchorage. Windsor plans to build a large indoor tennis facility. ABC Construction Company has recently perfected an innovative design that greatly reduces the cost of installing and maintaining indoor tennis courts.

Windsor and ABC enter into discussions concerning the indoor tennis facility. ABC informs Windsor that it is interested in building the facility using its new design, but that ABC wants the design to remain confidential. During the discussions, ABC asks Windsor to sign a nondisclosure agreement stating that "Windsor agrees that it will not disclose ABC's indoor tennis court design to anyone and will not use the design without ABC's participation or permission." Windsor signs the nondisclosure agreement, reviews the design, and the parties later enter into a separate agreement to build the facility.

During construction of the Anchorage club, Windsor asks for some modifications to the facility. ABC completes the facility, and then presents Windsor with a bill for \$200,000 over the contract amount, correctly claiming that Windsor's modifications increased ABC's construction costs.

For reasons having nothing to do with the tennis club project, ABC is in deep trouble financially and will not survive without some additional payment. Windsor informs ABC that it will consider paying the entire claim when it has finished reviewing ABC's billing records, but before that can occur and after learning of ABC's financial problems, Windsor states that it will only pay ABC half of the claimed amount. Both parties sign a release relating to ABC's claim, in which Windsor pays \$100,000 to ABC to resolve all claims relating to the construction modifications.

1. Assume that, after accepting the \$100,000 payment, ABC attempts to set aside the release agreement and recover additional payment from Windsor relating to the construction modifications. Discuss and explain ABC's probable arguments for setting aside the release, and how a court would likely rule as to the validity of the release.

2. Assume, for purposes of this question only, that Windsor discloses ABC's design to a Seattle construction company for use in building Windsor's new tennis club in that city, without ABC's knowledge or consent. ABC later finds out about Windsor's use of its design for the Seattle tennis club. Discuss and explain whether ABC and Windsor entered into a valid nondisclosure agreement, whether ABC has a claim against Windsor based on the agreement, and if so, the appropriate types of damages that ABC might seek.