

ESSAY QUESTION NO. 5

Answer this question in booklet No. 5

Tom spends his summers in a cabin that he owns in an Alaskan ski resort town. He dislikes having to return to Alaska in the winter to perform maintenance jobs like shoveling snow off the cabin's roof. In September, he discussed his maintenance needs with Joe, a local contractor. "I just need somebody to check on my roof every couple of weeks," Tom said, "to clear the snow so the roof doesn't get overloaded." Joe replied, "I guess I can do that for you," and said he would charge a \$1000 fee for the whole winter. Tom agreed, and flew to his winter home in Arizona the next day.

Joe later sent Tom a form contract meant to encapsulate their agreement. It stated, "Joe's Maintenance agrees to visually assess Tom's roof every two (2) weeks. If there is excessive snow on the roof, Joe's Maintenance will remove it." Joe sent the form contract to Tom's Alaska address, however, and Tom, having left for the winter, never saw or returned it. Nonetheless, Tom sent the \$1000 payment to Joe in October, and Joe deposited the check. It snowed frequently in October and November and Joe checked on Tom's cabin after each time that it snowed.

One December day, after shoveling Tom's roof in the morning, Joe went skiing and hurt his knee badly. On his doctor's orders, Joe stayed in bed for two weeks. Joe did not arrange for anybody to cover for him while he was injured.

It snowed tremendously during those two weeks. Ten days into this time, the snow got to be too much for Tom's roof, and it collapsed. On the 14th day after he was injured, Joe checked on his maintenance jobs, saw the damage to Tom's cabin, and reported it to Tom.

1. Does Tom have a claim for breach of contract? Discuss.
2. If so, what are Joe's potential defenses to such a claim? Discuss.
3. Joe is willing to refund Tom's \$1000 fee, but Tom wants Joe to pay to get his roof replaced, as well as the cost of storing the items that were in his cabin during the repair. Discuss the merits of Tom and Joe's respective positions regarding damages.