CONTRACTS--ISSUE OF FORMATION--DEFENSE OF FRAUD IN THE FACTUM.

The (state number) issue reads:

"Did the plaintiff procure the signature of the defendant on the (name type of contract) by trick?"

(You will answer this issue only if you have answered the (state number) issue "Yes" in favor of the plaintiff.

On this issue the burden of proof is on the defendant.

This means the defendant must prove, by the greater weight of the evidence, that the plaintiff induced the defendant to sign a document different from the one intended with the result that the document the defendant intended to sign and the document he actually signed are not the same.

In making your determination you may consider

[whether the plaintiff surreptitiously substituted one document for another]

[whether the defendant was [blind] [illiterate] and the plaintiff falsely read the contents of the document to him]

[whether the plaintiff used some trick to obtain the defendant's signature on the document (other than by making false representations concerning the contents of the document)]

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1See N.C.P.I.--Civil 501.01 (Contracts--Issue of Formation).


3Parker, 192 N.C. at 802-03, 136 S.E. at 120.
CONTRACTS--ISSUE OF FORMATION--DEFENSE OF FRAUD IN THE FACTUM.
(Continued).

[whether the document intended to be signed and the
document actually signed were different documents].

Finally as to the (state number) issue on which the
defendant has the burden of proof, if you find by the greater
weight of the evidence that the plaintiff procured the signature
of the defendant on the (name type of contract) by trick, then
it would be your duty to answer this issue "Yes" in favor of the
defendant.

If, on the other hand, you fail to so find, then it would
be your duty to answer this issue "No" in favor of the
plaintiff.