

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*)<sup>1</sup> 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.<sup>2</sup>

In making your determination you may consider<sup>3</sup>

[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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<sup>1</sup>See N.C.P.I.--Civil 501.01 (Contracts--Issue of Formation).

<sup>2</sup>*Nixon v. Nixon*, 260 N.C. 251, 257, 132 S.E.2d 590, 594 (1963) and *Parker v. Thomas*, 192 N.C. 798, 802, 136 S.E. 118, 120 (1926).

<sup>3</sup>*Parker*, 192 N.C. at 802-03, 136 S.E. at 120.

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(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.