

## **Contracts Hypo for the Week of Labor Day 2016**

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Zco is a developer of multiplayer games, which are mostly played online. However, Zco's most recent game uses a combination of real world and virtual experiences to enhance the game and to combat arguments that playing online games is anti-social and unhealthy. One component of the game is that players are invited to look for specific items in the real world and upload pictures of those items to Zco's database. Some of the specified items are relatively easy to find, but others are much harder. A game player who succeeds in finding the hard to find items and uploading pictures of them gains large numbers of points in the game.

Website W operates a market in items for the game. Game players can buy items through the website or they can buy digital pictures of items or lease items or even ask W to search for specific items. Game players must become members of the W marketplace in order to buy items and benefit from W's services, and they become members by clicking a tab on the website which states: "I apply for W membership." The website shows prominently testimonials from happy customers. Right at the bottom of the front page of the website in the corner of the page the word "Terms" appears. This is meant to be a hyperlink to the W marketplace terms and conditions, which include a requirement to pay a set monthly membership fee, a requirement that members give 3 months' notice of their intention to terminate their membership, and an arbitration agreement with a class action waiver. For the first 6 months of 2016 the hyperlink to the terms and conditions was not functional. Once people become members of the W marketplace they sign in to use the market. On the sign in page and also on the pages where the members order items there are links to the Terms which have at all times been functional.

Victor became a member of W in January 2016. He is an avid player of the game and sometimes live streams his sessions in the game (he has a number of fans who enjoy watching these sessions). He has bought and leased a number of items through the W marketplace. Two days ago Victor placed an order with W for a very expensive item, a very rare book for which he expects to pay \$1000 plus W's search costs. At the time of placing the order Victor paid a deposit of \$300. Yesterday (August 31) he discovered that he could obtain the same item at a very much lower cost from another marketplace. He thinks he has been a fool and has been overpaying W for months. He immediately canceled the order and terminated his W membership. He has not paid the September membership fee, although W informed him that he was required under the W terms and conditions to pay the membership fee for three months because of the requirement to give three months' notice of termination of his membership. W also says that when they find the book Victor will have to pay for it.