Property Question # 1

Property Essay Question Lori owns a small shopping center. In April 1999, Lori leased a store to Tony. Under the lease Tony agreed to pay Lori a monthly fixed rent of $500, plus a percentage of the gross revenue from the store. The lease term was five years. In part the lease provides: Landlord and Tenant agree for themselves and their successors and assigns: * * * 4. Tenant has the right to renew this lease for an additional term of five years, on the same terms, by giving Landlord written notice during the last year of the lease. 5. Tenant will operate a gift and greeting-card store only. Landlord will not allow any other gift or greeting card store in the center. * * * In July 2000, Tony transferred his interest in the lease in writing to Ann. Ann continued to operate the store and pay rent. In February 2003, a drugstore in the shopping center put in a small rack of greeting cards. Ann promptly complained, but Lori did nothing. Beginning in March 2003, Ann stopped paying the percentage rent, but continued to pay the fixed rent alone. Lori took no action except to send a letter in April 2003 requesting payment of the percentage rent that was due. In January 2004, Ann sent a letter to Lori requesting that Lori renew the lease according to its terms. Lori denied that she had any obligation to renew.

1. Is Ann entitled to a renewal of the lease? Discuss.

2. Is Lori entitled to the past-due percentage rent from: a. Ann? Discuss. b. Tony? Discuss.

Model Answer Property
Question # 1

1. Ann's Right to Renew the Lease

Tenancy for years

A tenancy for years is a non-freehold estate with a fixed beginning and an automatic ending date wherein the tenancy expires without notice.

In April 1999, Lori leased a store to Tony. Under the lease Tony agreed to pay Lori a monthly fixed rent of $500, plus a percentage of the gross revenue from the store. When Landlord Lori rented the space to Tony, she created a non-freehold estate with tenant Tony. The lease term was five years. Thus, a fixed beginning and automatic ending date. Tony's tenancy would expire without the necessity that either party give notice of the expiration of the lease period.

A tenancy for years was created.

Sublease vs. Assignment

A sublease is a partial transfer of the entire term, or entire rights and remedies under a lease, with no privity of contract or estate between the landlord and new tenant.

Lori will argue that in July 2000, Tony transferred his interest in the lease in writing to Ann. His transfer of the lease was less than the entire lease which created a sublease. Hence, the sublessee, Ann would not be considered a successor or assignee of the original lessee and would not be in privity of contract with the landlord. Therefore Ann does not have any rights under the sublease to renew the lease for another five year term.

However, Ann will argue that Tony transferred all of his interest in the lease to Ann, creating an assignment.

Assignment of the Lease

An assignment is a complete transfer of the estate, creating privity of contract between the landlord and first tenant and privity of estate between the landlord and new tenant.

When Tony transferred his interest in the lease to Ann, he gave Ann all of the remaining years under the lease and all of the existing rights that he had. Therefore, his assignment was a complete transfer. Upon the transfer, privity of estate between the landlord Lori and the new tenant Ann was created.

Assignment of covenant to renew lease

An assignment is a transfer of an existing right under the terms of an existing contract.

Are the Rights Assignable?

Rights under a lease are assignable if they are not too personal in nature, prohibited by contract, or prohibited by law.

In July 2000, Tony transferred his interest in the lease in writing to Ann. The assignment of a lease for a store in a shopping center is not too personal in nature to assign. The right to use the premises as a gift and greeting-card store only, would not materially alter the performance under the terms of the lease between Lori and Tony. Therefore, Ann's right to receive the use of the lease for gift and greeting-card store is not too personal in nature. Further, the facts state the contract stated Landlord and Tenant agree "for themselves and their successors and assigns." Hence, the contract did not prohibit the assignment of the lease. Also, the assignment of receiving the right to a lease of real property is not prohibited by law.

There is evidence that Lori received notice of the assignment based on the facts that Ann continued to operate the store and the fact that Lori accepted the monthly rental payments from Ann. Since she failed to protest, and cashed Ann's rental payments, she implicitly assented to the transfer. Thus, Lori waived any right she may have had to object to the transfer of the assignment.

Therefore, Tony had the power to assign his rights to Ann, although he would remain liable for damages resulting from any breach under the terms of the contract.

Has There Been a Valid Present Assignment?

An assignment requires a present intention to transfer existing rights from the assignor to the assignee.

Tony assigned his lease to Ann taking over the gift and card store for the remainder of the lease period. The act of Ann undertaking the business, and actually running the store shows that Tony, the assignor, had the present intent to transfer his existing right to the shop, to Ann the assignee.

Based on Lori's conduct of accepting and cashing the monthly rental payments from Ann, Lori has accepted the assignment. Thus, Ann has stepped into Tony's shoes and assumed all the rights of enforcement that Tony had prior to the transfer.

Therefore, the assignment of the rights to the rental agreement from Tony to Ann will be deemed valid.

Does the covenant for tenant's right to renew the lease for an additional five years run with the land?

Covenant

An affirmative covenant is a promise to do an act.

In order for Ann to be able to enforce her right to renew the lease, she will need to establish that the covenant runs with the land.

Does the Covenant's Benefit Run With the Land?

For the benefit to run with the land, the contracting parties must show a covenant, intent to bind all subsequent heirs and assigns, that the promise touches and concerns the land, and that the parties are in vertical privity.

The Lori-Tony covenant has been previously established above. Lori leased the property to Tony in 1999. The lease contained the language "Landlord and Tenant agree for themselves and their successors and assigns." This express language demonstrates the intent of the contracting parties to bind all subsequent heirs and assigns for the 5-year period of the lease. Thus, there is intent to allow the rights to all subsequent heirs and assigns.

The promise to renew the lease for an additional term of five years, under the same terms, by giving Landlord written notice during the last year of the lease enhances the value (benefit) of the lease for the gift shop because it would allow the store to continue and prosper based on their established cliental. Further, restricting the landlord from leasing the property to another, or changing the terms of the lease on the property for another five year term would decrease the value (burden) of Lori's land by assuring no increased rent for another five year period. As such, the promise touches and concerns the land.

Finally, Lori and Tony were the original covenanting parties. This grantor-grantee relationship created mutual interests establishing horizontal privity of estate.

When Ann was assigned the rights to the lease for the gift shop from Tony, she would be classified as a successive assignee to Tony, who was one of the original parties to the promise. As such, she would be in vertical privity.

The benefit of the landlord allowing Ann the right to renew the lease for an additional term of five years, on the same terms, by giving Landlord written notice during the last year of the lease, runs with the land.

Lastly, the covenant required written notice to be given during the last year of the lease. In January 2004, Ann sent a letter to Lori requesting her to renew the lease according to the previous terms. Thus, Ann has fulfilled the notice requirement.

Breach of Lease:

Failure to perform under the terms of the lease.

Lori will argue that Ann breached her covenant to pay rent. The duty to pay rent is an obligation that runs with the land. Since Tony transferred his rights to Ann, Ann is in privity of estate with Lori. Her failure to pay rent constitutes her failure to perform under the terms of the lease. Hence, a material breach of the lease.

Ann's failure to pay the percentage rent allows Lori the right to refuse to renew the lease at the end of the term.

Ann will argue that her performance of paying the percentage rent has been excused since Lori allows another shop to have greeting card in the center, which is in violation of the lease terms. Ann can argue that the restriction of any gift or greeting cards competition covenant that ran with the land, as discussed.

Ann gave written notice to the landlord (Lori), in January of 2004, the last year of the lease. She has met this requirement pursuant to the terms of the lease.

Because the covenant to renew the lease "runs with the land," Ann is entitled to enforce the covenant upon her satisfaction of giving notice.

Therefore, Ann is entitled to a renewal of the lease.

2. Is Lori Entitled to the past-due percentage rent from

A. Ann?

Covenant to Pay Rent

As discussed, Tony assigned all of his rights under the existing lease created between Lori and himself. Thus, the covenant to pay rent runs with the land, and because the contract expressly states that the obligations of the lease would be "binding" on their successors and assigns, Ann is obligated to pay the percentage rent based on gross revenue.

Ann's duty to pay rent is a covenant that runs with the land. Since Ann is the tenant in possession of the property, she is in privity of estate with Lori. Lori may sue Ann to recover for the value of the rent that she is owed.

Ann may try to argue that Lori is estopped from receiving the rent since she is not complying with the terms of the restriction in the lease.

Further, Lori's failure to enforce the percentage rent constituted a "waiver" which Ann then reasonably relied upon to continue her tenancy without paying percentage rent. The facts indicate that Lori's only response to Ann's failure to pay percentage rent was to write one letter requesting rent in April 2003. Ann continued occupying the premises for 8 months after requesting the percentage rent. On these facts, Lori may have waived the covenant to collect percentage rent.

(The non-competition covenant and the renewed lease may not include this covenant - see below.)

B. Tony?

When parties enter into a contract, and one party assigns its interests in the contract to a third party, the assignor remains liable to the obligee on the original contract. The landlord may collect rent from any party with whom she is in privity of contract or privity of estate. Tony and Lori signed the original lease.

Tony assigned his interests to Ann. As an assignor, Tony is not relieved of his duty to ensure that the contract is fully performed. The assignment of Tony's interest in the lease to Ann did not discharge Tony's duties under the lease. Tony is in "privity of contract" with Lori and is bound by the contractual duties imposed by the lease.

Absent a novation, which would have discharged Tony's obligation to pay rent, Tony remains liable for the past due percentage rent owed to Lori, subject to the defenses, that Ann assert as discussed above.

There has been no novation. Hence, Tony remains liable to pay rent.

Torts Essay Question # 2

One evening, Singer was performing at a local restaurant that was packed with customers. Singer was an independent contractor hired by Restaurant to bring in customers. While he was performing, a fire broke out in the restaurant's kitchen and caused smoke to fill the premises. Seeing the smoke, he screamed, "Fire!" and ran for the exit. The customers panicked and rushed toward the exits.

Polly, a blind woman who was sitting at a table near the stage, tried to find an exit but mistakenly walked into the kitchen, where she inhaled thick smoke and was burned by flames. Eventually, she found her way outside and collapsed face-down on the sidewalk.

A passerby noticed Polly. Concerned that she might not be breathing, he turned her over and prepared to administer CPR. As it happened, she did not require CPR. But by turning her over, he worsened her injuries.

An investigation showed that the fire began in one of the restaurant's ovens. The oven's ventilation system had failed to work properly because grease had built up in a pipe and blocked the airflow. A statute provides that restaurants "shall equip ovens with ventilation systems and shall maintain such systems in working order at all times," and makes violation punishable by a fine of $250 per day.

1. What claims, if any, can Polly reasonably bring against the singer, what defenses, if any, can he reasonably assert, and who is likely to prevail? Discuss.

2. What claims, if any, can Polly reasonably bring against the restaurant, what defenses, if any, can it reasonably assert, and who is likely to prevail? Discuss.

3. What claims, if any, can Polly reasonably bring against the passerby, what defenses, if any, can he reasonably assert, and who is likely to prevail? Discuss

Question # 2
Torts Model Answer

1. What claims, if any can Polly bring against the Singer, what defenses if any, can she reasonably assert, and who is likely to prevail? Discuss.

Negligence

Negligence requires a showing that a duty was owed, that the duty was breached, and that the breach was the actual and proximate cause of the damage.

Duty

Defendant has a duty to act as a reasonable prudent person under the same or similar circumstances.

Polly will argue Singer owes a duty to inform patrons of the restaurant of a fire in a proper manner and not subject any patrons in the restaurant to any harm. A reasonable prudent person would take steps reasonably necessary to assure that the patrons where warned about the fire and not "scream" out "Fire!" in a busy restaurant and run to the nearest exit. Moreover, screaming that there is a fire in a packed restaurant is likely to elicit the panic that ensued as the crowd attempted to escape.

Singer will counter his duty is owed only to the restaurant owner who hired him and not to those patrons in the restaurant.

Therefore, Singer owes no duty of care to Polly.

Duty – Cardozo View

Polly will argue that under the Cardozo View, Singer owes a duty of due care to those plaintiffs within the foreseeable zone of danger.

Since Polly was a patron in the restaurant who was listening to him sing, she was within the foreseeable zone of danger of Singer's conduct of screaming "Fire!" in a packed restaurant and having everyone in the restaurant panic to get to the exit.

Singer will counter that, although he could foresee screaming "fire" within a crowded restaurant would cause patrons to rush to get to the exit, Polly was not hurt by the panicked mob trying to get out of the restaurant. The fact is that Polly was injured as she tried to find an exit but mistakenly walked into the kitchen where she was burned. Further, the incident only occurred because she was blind and did not have anyone with her, or a seeing-eye dog. As such, Polly is not within the foreseeable zone of danger.

Therefore a duty is owed.

However, if the court should find there is no duty owed under Cardozo, Polly would argue Andrew's View.

Andrew's View

Under Andrew's View, Singer's conduct would create a foreseeable risk of harm to Polly since she is a blind patron within the restaurant. Further, Singer should have known that yelling "Fire!" in a restaurant is conduct that could result in injury. For example, it is foreseeable that had the other patrons not panicked at least one of those other patrons would have had the presence of mind to realize that Polly was blind, and then assist her. Thus, Singer's conduct of screaming "Fire!" created a reasonably foreseeable risk of harm to others.

Pursuant to Andrew's view, a duty of due care is owed to all.

Therefore, the court will find that Singer did owe a duty of due care to Polly.

Breach

A breach is a failure to act as a reasonable prudent person under the same or similar circumstances.

Singer screamed "Fire!" in a crowded restaurant. The act of screaming resulted in restaurant patrons rushing towards an exit, with all of them leaving Polly, who was trying to find an exit. This left the blind Polly to find her way out of an unfamiliar burning, building. In her attempt to find an exit she mistakenly walked into the kitchen and was burned by the flames. Thus, Singer's conduct fell below the reasonable person standard of care.

Therefore, Singer breached his duty owed to Polly.

Actual Cause

Polly would not have been severely injured "but for" Singer screaming "Fire!" in the restaurant.

Thus, Singer's conduct was the actual cause of Polly's injuries.

Proximate Cause

Singer will argue that the only foreseeable harm to Polly was being trampled on by other patrons trying to get to an exit and not by being burned in the kitchen of the restaurant.

However, it is foreseeable if one screams that there is a fire in a packed restaurant that patrons, even blind patrons, will try to find an exit in order to escape the fire. It is also foreseeable that patrons who are panicked will rush to exit and not remain to assist those who might need assistance to exit.

Polly was blind. No one in the restaurant, including Singer, tried to help escort Polly to an exit. Since no one helped in the situation, and everyone basically fended for themselves, the fact that Polly mistakenly entered in the kitchen were the fire was located and getting burned is foreseeable.

Singer will argue that passerby noticed Polly on the sidewalk and administered CPR. This worsened her condition. Thus, passerby was an intervening act. However, it is foreseeable that if a person is collapsed face down on the sidewalk that a person coming by may administer CPR to remedy the situation. Thus, the negligence of passerby is foreseeable. Therefore, when Polly was burned and someone came to her aid causing her condition to worsen was foreseeable.

Therefore, Singer was the proximate cause of Polly's injuries.

General Damages

Polly sustained injuries as a result of being burned. Therefore, she would be able to recover for her pain and suffering.

Special Damages

Plaintiff may recover for any medical damages or lost of income if specifically plead.

Polly will be able to recover any medical expenses incurred and any lost wages.

Therefore, Polly may recover special damages.

Defense - Contributory Negligence

Conduct of plaintiff which falls below the reasonable person standard of care, which if proven, is a complete defense to a negligence cause of action.

Singer will argue if Polly had a nurse or a seeing eye dog she would not have been injured by the fire. The act of not having one to aid you when you are blind established conduct falling below the standard of care which Polly owed to herself. Polly should have had a seeing-eye dog, or made the restaurant aware that she was blind and would need assistance. Thus, she contributed to her own injuries.

However, the fact that Polly was blind did not cause her injury. Polly was reacting to Singer screaming "Fire!" and customers of the restaurant rushing towards an exit. This caused Polly to look on her own for an exit. The result was that she mistakenly ended up in the kitchen and was burned. As a blind person she did not know where the exit was, let alone the fire. Since she did not intentionally go into the kitchen to go towards the fire, and because no one was aiding her, her conduct did not fall below the standard of care.

Therefore, contributory negligence is not a valid defense.

Defense - Comparative Negligence

Where plaintiff's conduct falls below the standard of reasonable care such that liability, including the amount of plaintiff's negligence, is apportioned according to fault.

Singer will argue since Polly's conduct fell below the standard of care owed, the court will apportion her own fault against Singer's liability. However, since Polly's conduct did not fall below the standard of care owed, as discussed supra, the court will not apportion according to fault.

Assumption of Risk

One who assumes a risk when he has knowledge, comprehension and an appreciation of the danger, and voluntarily elects to encounter it, cannot recover for Defendant's negligence.

Singer will argue since Polly looked for an exit on her own knowing that she was blind and could not see to able her to find an exit. Knowing that Singer screamed "Fire!" Polly had comprehension and an appreciation of the danger and voluntarily elected to encounter that danger by trying to find an exit without help.

However, Polly will argue that after Singer screamed into the restaurant no one came to help her exit. She was unfamiliar with the restaurant layout, and she did not know where the fire originated. Her only alternative was to wait and see if someone came to her aid, which would result in her placing her life at risk if no one came to help. Thus, she did not have knowledge, comprehension or an appreciation of the danger.

Therefore, assumption of the risk is no defense.

2. What claims, if any, can Polly reasonably bring against restaurant, what defenses, if any, can reasonably assert and who is likely to prevail? Discuss.

Vicarious Liability

An employer is vicariously liable for any tortious acts committed by his employee within the scope of the employment.

By restaurant hiring Singer to sing in the restaurant, there was an employer and employee relationship. While performing, a fire broke out in the kitchen and Singer screamed that there was a fire. The scream caused the packed restaurant customers to panic and rush toward exits. Thus, there was a tortious act. Further, Singer was singing when he screamed, thus he acted within the scope of his employment.

It appears that restaurant may be liable for Singer's act.

Independent Contractor

Generally, no liability can be assessed against an employer for the negligent conduct of the independent contractor because an employer has no right to control the manner in which an independent contractor performs the contract.

Restaurant did hire Singer to sing in their restaurant. However, it was Singer who screamed "Fire!" into the restaurant which resulted in the restaurant patrons panicking, and resulting in Polly trying to find an exit, which resulted in her becoming burned. Since Singer's act of screaming that there was a fire upon seeing smoke, restaurant had no right to control Singer, and no had no control over his performance. Thus, Singer was an independent contractor who acted negligently.

Therefore, restaurant will not be held vicariously liable for Singer's negligent conduct.

Negligence

Negligence requires a showing that a duty was owed, that the duty was breached, and that the defendant's breach was the actual and proximate cause of Plaintiff's damages.

Negligence Per Se – Violation of Statute

Negligence per se by violation of statute is where there is a clear intent to legislate in order to protect a class of persons to be protected from the type of injury suffered. To establish negligence per se, you need to look to the intent of the legislature in creating the statute, you must be a member of the class the statute is designed to protect and the injury must be the type the legislature is trying to prevent. Under majority jurisdictions, violation of the statute means the defendant is negligent as a matter of law, and establishes both a duty and a breach. Under some minority jurisdictions, violation of the statute creates a rebuttable presumption of negligence, while in other minority jurisdictions it is only evidence of negligence.

A statute provides that restaurants shall equip ovens with ventilation systems and shall maintain such systems in working order at all times. An investigation revealed that the fire began in one of the restaurant's ovens. The ventilation system had failed. The intent of the legislature is to protect patrons in the restaurant form being burned by outbreaks of fire that may occur form their ovens.

Further, the legislature intended to protect Polly a patron at Restaurant. As such, Polly is a member of the class that the statute was designed to protect.

The oven ventilation system failed to work properly because grease had built up in a pipe and blocked the airflow. Since Polly was burned when the fire broke out, she suffered the type of injury the statute was designed to prevent.

Therefore, Restaurant's violation of the ventilation statute is negligence per se.

Special Duty - Landowner/Occupier

Restaurant is open to the public for business. Polly was a patron and eventually was injured, thus, qualifying as a landowner/occupier. Further, since Polly was a patron of restaurants and conferred a pecuniary benefit on Restaurant, she would be considered an invitee. As an invitee, restaurant owed a special duty to inspect its premises and warn the patrons of any known dangers, i.e., the improper ventilation system.

Therefore, Restaurant owed a special duty to Polly.

Breach

A breach is a failure of the landowner to reasonably inspect, and correct or warn of, any known dangers.

Polly will argue Restaurant failed to properly inspect and correct or warn her of the potential of a fire breaking because of the grease build up in the ovens. While at Restaurant a fire did break out in the restaurant, no one from the restaurant came to help Polly find an exit and she was burned by the fire. Thus, Restaurant did not act as an average reasonable person under same or similar circumstances.

Therefore, restaurant's failure to make the premises safe and warn of the known danger would be considered a breach of its duty to Polly.

Actual Cause

"But for" Restaurant's failure to correct or warn of the danger, or to aid Polly to find an exit in the time of the emergency, Polly would not have mistakenly entered the kitchen where the fire broke out and be burned.

Therefore, Restaurant's actions were the actual cause of the Polly's injuries.

Proximate Cause

It is foreseeable that if an oven is not maintained in proper working order and ventilation pipe becomes clogged with grease that a fire could start. Here a fire started in the restaurant's oven and the smoke was not properly ventilated because of a clogged pipe. Therefore, in this instance, the fire and smoke were foreseeable.

Restaurant will also argue that passerby noticed Polly on the sidewalk and administered CPR. This worsened her condition. Thus, passerby was an intervening act. However, it is foreseeable that if a person is collapsed face down on the sidewalk that a person coming by may administer CPR to remedy the situation. Thus, the negligence of passerby is foreseeable. Therefore, when Polly was burned and someone came to her aid causing her condition to worsen was foreseeable.

Therefore, Restaurant was the proximate cause of Polly's injuries.

General Damages

Defined and discussed supra.

Special Damages

Defined and discussed supra.

Defenses

Contributory Negligence
Defined and discussed supra.

Comparative Negligence
Defined and discussed supra.

Assumption of Risk
Defined and discussed supra.

3. What claims, if any, can Polly reasonably bring against the passerby, what defenses, if any, can she reasonably assert, and who is likely to prevail? Discuss.

Negligence

Negligence requires a showing that a duty was owed, that the duty was breached, and that the defendant's breach was the actual and proximate cause of Plaintiff's damages.

Duty

A rescuer owes a duty to a victim to act as a reasonable person and to not take any abnormal risks in attempting to perform the rescue.

Here passerby noticed Polly on the ground and observed that she might not be breathing and turned Polly over in preparation to perform CPR. As such, the passerby was a rescuer.

Therefore, rescuer owed a duty to Polly to act as a reasonable person in her attempt to assist her.

Breach

A rescuer breaches his duty of care to a plaintiff when he fails to act in a reasonably prudent manner when he assists the plaintiff.

When the passerby turned Polly over, plaintiff will argue that passerby failed to act in a reasonably prudent manner because passerby worsened his injuries while attempting the CPR that Polly did not even need.

However, the passerby will argue that since danger invites rescue, and because Polly appeared to be not breathing, his preparation for CPR by merely turning Polly over was reasonable conduct. Moreover, it appears that upon turning Polly over, passerby was able to determine that Polly did not need CPR and passerby ceased his assistance (and the harm) at that point.

Therefore, passerby did not breach his duty of care to Polly.

However, should the court find passerby did breach his duty of care to Polly, the following arguments are made.

Actual Cause

"But for" passerby turning Polly over in an attempt to perform CPR, Polly's injuries would not have been worsened.

Therefore, passerby was the actual cause of Polly's worsened injuries.

Proximate Cause

It is foreseeable that when a passerby turns a person over in order to perform CPR that the person could be injured or his injuries could be worsened.

Therefore, Polly will argue that passerby was the proximate cause of Polly's injuries.

Therefore, the passerby was the proximate cause of Polly's damages.

General Damages

Defined and discussed supra. Additionally, a negligent defendant would be responsible for worsening those injuries already sustained by plaintiff.

Special Damages

Defined and discussed supra. Additionally, a negligent defendant would be responsible for the additional medical expenses and lost wages resulting from his negligent conduct.

Defenses

Contributory Negligence
Defined and discussed supra.

Comparative Negligence
Defined and discussed supra.

Assumption of Risk
Defined and discussed supra.

UCC Question # 3

GrainCo, a regional grain distributor, sent an offer to sell ten railroad cars of wheat to Processor. The entire offer is contained on a signed form. The front side of the form contains GrainCo's name and address, along with blank spaces for the description of the goods, quantity, price, and delivery date. The blanks were filled in with the desired information. The following statement appears at the bottom of the front side of the form:

> "Any contract resulting from acceptance of this offer shall consist only of
>
> those terms appearing on the front and reverse sides of this document."

The reverse side of GrainCo's form has six paragraphs. Paragraph five reads as follows:

> "Any disputes arising under this agreement shall be resolved through binding
>
> arbitration under the rules of the Commercial Arbitration Association."

Processor responded to GrainCo's offer with its standard acceptance form. Processor's form contains its name, address, and company logo embossed at the top of the page with the words "Purchase Order" just below. It has blank spaces for the description of the goods, quantity, price, and delivery date, which Processor filled in with information matching the information on GrainCo's offer. Processor's Purchase Order form has five paragraphs on the back. Paragraph five states:

> "The laws of the State of California shall govern this agreement and any claims
>
> or controversies arising during performance shall be resolved through proceedings
>
> in the courts of the State of California."

Processor's Purchase Order form has a signature line at the bottom of the front side, but due to a clerical error the form sent to GrainCo was not signed. Soon after receiving Processor's Purchase Order form, GrainCo purchased ten railroad cars of wheat from local suppliers for shipment to Processor.

1. Assume that before any wheat is shipped to Processor, the price of wheat falls sharply. If Processor informs GrainCo that it will not accept the ten railroad cars of wheat, will Processor be liable to GrainCo for breach of contract? Discuss.

2. Assume instead that GrainCo delivers the ten railroad cars of wheat to Processor, and Processor pays to GrainCo the full contract price. If Processor has a complaint about the quality of the wheat it received, must Processor submit its claim to the Commercial Arbitration Association? Discuss.

Question # 3
UCC Model Answer

1. Assume that before any wheat is shipped to Processor, the price of wheat falls sharply. If Processor informs GrainCo that it will not accept the ten railroad cars of wheat, will Processor be liable to GrainCo for breach of contract. Discuss?

GrainCo v. Processor

U.C.C

The U.C. C. applies to transactions in goods.

The contract deals with the selling of wheat, thus it is a transaction in goods.

Thus, the U.C.C. applies.

Merchant

A merchant deals in goods of a kind.

GrainCo distributes wheat, thus deals in goods of a kind. Processor purchases a high volume of wheat, thus processor deals in goods of a kind.

Thus, both GrainCo and Processor are merchants.

Offer

An offer is an outward manifestation of present contractual intent with definite and certain terms which is communicated to the offeree.

GrainCo sent an offer to sell demonstrating an outward manifestation of present contractual intent. The offer stated 10 railroad cars, quantity, and the blank spaces for price, delivery and date were filled out, establishing time, identity of parties and price. Further, the contract dealt with railroad cars of wheat, thus subject matter was also identified. Hence the terms where stated with particularity making them definite and certain.

The form was sent to Processor, thus communicated to the offeree.

Hence a valid offer.

Acceptance

An unequivocal assent to the terms of the offer.

Processor responded with a standard form with an added paragraph of California law governing the agreement. Thus, Processor's response was not an unequivocal assent to the terms of GrainCo's offer.

Battle of the Forms -- U.C.C. 2-207

Pursuant to U.C.C. 2-207, additional terms between merchants become part of the contract unless the acceptance is expressly conditional.

Both GrainCo and Processor are merchants. GrainCo's offer stated any contract resulting from acceptance of this offer should consist only of those terms appearing on the *front* and reverse sides of this document. Since GrainCo conditioned acceptance on these terms Processor's clause in the acceptance form is not part of the contract.

Thus, an acceptance will be found with **the terms on GrainCo's offer form.**

Consideration

Bargained for exchange of a legal detriment.

GrainCo agreed to deliver wheat in exchange for Processor's payment for the wheat. Processor agreed to pay for the wheat in exchange for GrainCo's delivery of the wheat.

Thus, valid consideration exists.

Statute of Frauds

A contract for the sale of goods over $500.00 or more must be in writing to be enforceable.

Ten railroad cars of wheat are goods. Arguably, such amount of wheat costs more than $500.00 such that the contract must be in writing.

Exception – Sufficient Memorandum

A memorandum with essential terms signed by the party to be charged will take the contract out of the purview of the statute of frauds.

Processor's purchase order form contained the description of the goods, quantity, price and delivery date. Thus, it contained the essential terms.

Further, the form contained the name and logo of the company, which may satisfy the signing by the party to be charged.

Exception - Estoppel to Plead Statute of Frauds

Where a promisor represents by conduct that he will perform, in spite of statute of frauds, coupled with promisee's detrimental reliance, he will be estopped to assert the statute of frauds.

Soon after receiving Processor's order form, GrainCo purchased 10 railroad cars of wheat from a local supplier. As evidenced by GrainCo's conduct, it relied on Processor's order to its detriment. Thus, the statute of frauds is no defense.

Conditions

An act or event that must occur before one's duty arises.

Constructive Condition Precedent

GrainCo must deliver the wheat before Processor's duty arises to pay.

Anticipatory Repudiation

Processor informed GrainCo that it would not accept the 10 railroad cars of wheat, thus repudiating the contract.

Commercial Impossibility

Processor will contend that the price of wheat has fallen sharply, thus it is commercially impossible for it to perform. However, being able to pay a lesser price for wheat does not make the contact commercially impossible.

Anticipatory Breach

Processor told GrainCo prior to delivery that it would not accept the 10 railroad cars of wheat. Thus, Processor repudiated the contract prior to GrainCo's performance.

Damages

GrainCo can recover the full contract price, plus incidentals.

2. Assume instead that GrainCo delivers the ten railroad cars of wheat to Processor and Processor pays to GrainCo the full contract price. If Processor has a complaint about the quality of the wheat it received, must Processor submit its claim to the Commercial Arbitration Association? Discuss.

Processor v. GrainCo

Non-Conforming Goods -- Perfect Tender Rule

If the goods or tender of delivery fail in any respect to conform to the contract, buyer may reject the whole, accept the whole, or accept any commercial unit(s) and reject the rest.

Processor had a complaint about the quality of the wheat, thus Processor argued that the goods failed to conform to the quality set forth in the parties' contract. Since the non-conforming goods were delivered, the perfect tender rule was violated. Thus, Processor's action of accepting the whole was proper, except he must now sue for the difference between the contract price and the value of lesser quality wheat.

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Defined and discussed supra.

Thus, Processor will be bound by the arbitration clause in GrainCo's form since the form was expressly conditional.