

Question 1

Child, a four-year-old, was seated in a shopping cart her mother was using to shop at Market. While mother was distracted with her shopping list, Child took a banana from a display counter and took a bite out of it, peel and all. Child swallowed the bite she had taken and threw the remainder of the banana onto the floor. Eventually, Child became very ill from a toxic substance the banana supplier had sprayed the banana skin with before delivery of the bananas to Market.

Shopper slipped on the banana that Child had thrown onto the floor and fell against the shopping cart he was using. As he fell, he hit his face on a sharp edge protruding from the shopping cart, severely injuring his eye.

Polly, a police officer, who was off duty and doing her personal shopping, saw Shopper fall and ran to his aid. Polly slipped on the banana that child had thrown onto the floor and, as Polly fell, she came in contact with the sharp edge of the same shopping cart that Shopper had used. Polly's arm was seriously cut as a result.

Child, through her mother as guardian ad litem, Shopper, and Polly filed separate lawsuits against Market. Child claims that Market is strictly liable for injuries caused by the toxic substance on the banana peel; Shopper and Polly each claim that Market is strictly liable for the injuries caused by the sharp edge on the shopping cart.

What defenses might Market reasonably raise to each claim, and what is the likely outcome of:

1. Child's lawsuit against Market? Discuss.
2. Shopper's lawsuit against Market? Discuss.
3. Polly's lawsuit against Market? Discuss.

Question 2

Twelve-year-old Al was throwing rocks against a tree alongside the road to amuse himself while waiting for his school bus. One of the rocks thrown by Al missed the tree and shattered the windshield of an approaching car driven by Bill.

Bill, who had just left a bank he had robbed, was driving carefully and below the speed limit to avoid attracting the attention of the police. When the windshield shattered, Bill swerved, causing the car to run off the road. The car struck and killed Vic, a boy who had also been waiting for the school bus.

Chuck and Dave, Vic's brothers, decided that the accident had been Al's fault and, together, carefully planned to avenge Vic's death. They pooled their money and bought a shotgun, planning to use it to shoot Al. When the time came to go to looking for Al, however, Chuck told Dave, "I'm not going. If you want to do it, you're on your own." Dave carried out the plan, shooting and killing Al. After killing Al, Dave removed Al's watch and kept it for himself.

1. Did Al commit any crime relating to the death of Vic? Discuss.
2. Could Bill be found guilty of any crime relating to the death of Vic? Discuss.
3. Did either Chuck or Dave, or both, commit:
 - a. Conspiracy to murder Al? Discuss.
 - b. Murder of Al? Discuss.
 - c. Theft of Al's watch? Discuss.

Question 3

Apple Orchards (“Apple”), a grower of apples, entered into a written contract with Best Bakery (“Bakery”) to supply Bakery with all of Bakery’s apple requirements for one year. Under the contract, Apple was required to deliver on the first day of each month the quantity of apples that Bakery required. The contract price was \$5,000 per month, payable upon delivery of each shipment.

Apple delivered the required quantity each month for the first six months. At the end of the sixth month, Apple assigned its contract with Bakery to FruitCo, which undertook to deliver the requisite quantities for the remainder of the contract term. Bakery, having some doubts about FruitCo’s reliability, wrote both Apple and FruitCo a letter in which Bakery stated, “I want to be absolutely sure that both Apple and FruitCo will guarantee that I receive the quantity of apples that I require each month.”

Neither Apple nor FruitCo responded to Bakery’s letter. In the seventh and eighth months of the contract, FruitCo made deliveries that were substantially short of the quantity that Bakery required and that Apple had previously delivered. Nevertheless, Bakery accepted and paid for the short shipments.

At the end of the eighth month, Bakery entered into a contract with Davis Farms (“Davis”) to supply Bakery with its requirements for apples for the remaining four months of the year. The contract price was \$7,500 per month, payable upon delivery of each shipment. Bakery wrote a letter to Apple and FruitCo informing them that Bakery would no longer accept any apple shipments from either of them.

Bakery then sued both Apple and FruitCo for breach of contract to recover the difference between the Apple/FruitCo contract price and the Davis contract price.

Apple defended on the ground that, after its assignment to FruitCo, it was no longer liable to Bakery. FruitCo filed a counterclaim for breach of contract against Bakery to recover its lost profits.

Which party is likely to prevail in the lawsuit involving:

1. Bakery vs. Apple? Discuss.
2. Bakery vs. FruitCo? Discuss.

Question 4

A residence hall on the campus of University was evacuated after a number of student residents became seriously ill from aerial dispersal of bacteria that had infested the air conditioning system. Reputable consultants retained by University to prescribe a remedy for the infestation advised University that there were three ways to proceed: the cheapest would be to purge the air conditioning system with disinfectants, which had usually taken care of the problem in several other similar circumstances; a more expensive method would be to seal off and fumigate the building, which would be more effective; and the most expensive, and the most effective, would be to do multiple sealed fumigations.

To minimize the expense, University chose the cheapest method. University was also motivated by the need to recover revenues that it had lost during the closure and by the need to be able to provide desperately needed housing for the students. After allowing time for the disinfectant to work its way out of the air conditioning system, University reopened the residence hall and advertised reduced rates to induce students to move back in.

Paula and her roommate Art, students attracted by the reduced rates, spoke with University's Director of Student Housing, who told them that it was safe to move back. Paula said, "Well, I guess I have to rely on your judgment." Art agreed, saying, "At that price, it's worth the risk." They resumed living in the residence hall. Soon after they moved back, Paula and Art had an argument, which left Paula harboring anger against Art.

Within a month, Paula fell ill with the same bacterial infection. Art did not become ill. However, while waiting for an ambulance to pick her up, Paula stuffed Art's pillow into the ventilator duct with the intent of allowing the pillow to accumulate as much bacteria as possible. She then placed the pillow on Art's bed. A week later, Art became ill with the same infection.

Paula and Art each wish to sue University for personal injury. What theory of liability should they assert, what defenses might University raise against each, and who would be likely to prevail in each suit? Discuss.