



**California  
First-Year  
Law Students'  
Examination**

**Essay Questions  
and  
Selected Answers**

**October 2003**

**ESSAY QUESTIONS AND SELECTED ANSWERS**  
**OCTOBER 2003 FIRST-YEAR LAW STUDENTS' EXAMINATION**

This publication contains the essay questions from the October 2003 California First Year Law Students' Examination and two selected answers for each question.

The answers received good grades and were written by applicants who passed the examination. The answers were typed as submitted, except that minor corrections in spelling and punctuation were made for ease in reading. The answers are reproduced here with the consent of their authors.

Applicants were given four hours to answer four essay questions. Instructions for the essay examination appear on page ii.

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## **ESSAY EXAMINATION INSTRUCTIONS**

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and fact upon which the case turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other.

Your answer should evidence your ability to apply the law to the given facts and to reason in a logical, lawyer-like manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles. Instead, try to demonstrate your proficiency in using and applying them.

If your answer contains only a statement of your conclusions, you will receive little credit. State fully the reasons that support your conclusions, and discuss all points thoroughly.

Your answer should be complete, but you should not volunteer information or discuss legal doctrines which are not pertinent to the solution of the problem.

You should answer the questions according to legal theories and principles of general application.

## Question 1

Rita is beginning a new business as a painter. In order to attract clients, she printed hundreds of flyers that said, "Rita can paint your home for \$2,000—Call Rita now to accept this offer!" Each flyer also contained contact information for Rita, including her telephone number. Rita placed the flyers in the local grocery store where neighborhood residents would be likely to see them.

Marvin picked up a flyer and decided to call Rita. He owned a very large home in an adjoining town. Marvin knew that \$2,000 for painting his home would be a tremendous bargain for him. He telephoned Rita, and when she answered the phone, Marvin said, "I accept your offer to paint my home for \$2,000. Please start as soon as possible." Before Rita could say a word, Marvin blurted out his home address and abruptly hung up.

Sue also telephoned Rita and asked about having her garage painted. Rita informed Sue that she would have to come to Sue's home before providing a bid, and the two got together at Sue's home later that day. After looking over the garage and negotiating the particulars of the paint job, Rita told Sue that she would paint the garage for \$700. Sue responded that \$700 was a "pretty good price," but that she wished Rita would do the job for less and needed to consider her options. The following morning, Sue left a phone message on Rita's answering machine saying that she had decided to accept Rita's offer.

Rita also received a recorded phone message from Mary, another possible new client, stating, "I saw your flyer in the grocery store. If you can paint my house for \$2,000, the job is yours." The message provided Mary's address. After Rita drove past Mary's house to look at the prospective job, she decided to paint Mary's house. The next day Rita went to Mary's home, with all the necessary painting supplies, but when she started working on Mary's home, Mary came running outside and told Rita to stop painting the house, as she had found a different painting contractor for the job.

Does Rita have enforceable contracts with either Marvin, Sue, or Mary? Discuss.

## ANSWER A TO QUESTION 1

### Rita v. Marvin

#### Common Law

The common law applies to contracts for services. Rita (hereinafter "R") was offering to paint the houses of others. This is a service. Therefore, the common law would apply to this contract.

#### **Formation**

##### Preliminary negotiations

R is offering to paint the houses of others. In order to promote her business, she has placed flyers at a local grocery store. These flyers purport to be an offer, creating in Marvin, and others, the power of acceptance.

##### Offer I

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

The flyers contain several essential terms.

Subject matter: Painting of houses

Price: \$2,000

Quantity: Would be "one" (house) per person

However, the flyer lacked the other essential terms, such as the identity of the parties and the time of performance.

Marvin will argue that the flyer was sufficiently definite. He will argue that R impliedly agreed to paint his house for the aforementioned price. He will assert that in so doing, she manifested present contractual intent and communicated the offer to him.

However, because the flyer lacked several essential terms, it would probably not be considered a valid offer.

## Offer II

Defined supra

After seeing the flyer, Marvin called R. When R answered, he blurted out an acceptance of the “offer” and provided his name and address. These terms would fill in the remaining essential terms, identity of the parties and would include the time of performance.

When Marvin called R, he manifested a present contractual intent, to be bound to the terms of a contract. He also communicated his offer to R.

Therefore, Marvin’s phone call would probably be a valid offer.

## Acceptance

An acceptance is unequivocal assent to the terms of an offer.

Marvin hung up the phone before R was able to answer his offer. Therefore, she was never able to manifest an assent to the terms of his offer.

Therefore, no valid acceptance has probably occurred.

Since there is no valid acceptance, there is probably no enforceable contract between R and Marvin.

## **RITA v. SUE**

### Common law

For reasons mentioned supra, this contract will be governed by the common law.

### **Formation**

#### Offer

Defined supra

Again, the flyer would not be considered an offer, but rather an invitation to bid.

Sue (hereinafter “S”) called R. S and R met at S’s house, where R looked over S’s garage and provided S with an estimate in regard to painting the garage. R told S that she would paint S’s garage for \$700. This means that the terms of the offer would be

Quantity: One

Time of performance: As soon as possible

Identity of the parties: S and R  
Price: \$700  
Subject matter: painting the garage

All the terms requisite for an offer are present. R manifested present contractual intent, indicating that she would be bound by the terms of the contract. R communicated the offer to S.

Therefore, a valid offer probably exists, and it is in the power of S to accept the offer.

### Acceptance

Defined supra

An offer may be accepted for as long as it is held open. In this case, the offer was oral, made in the presence of S, to her person. Such an offer would terminate if and when R left S without having a definitive acceptance.

S will argue that she accepted the offer, unequivocally, when she left the message on R's answering machine. Such an acceptance is unequivocal.

However, S had stated the price was pretty good, but wished that R would do the job for less. R left without S having provided an assent at that time.

Therefore, because the offer was oral, it had to be accepted while R was with S. R did not impliedly or expressly leave the offer open for any time.

Therefore, because R did not leave the offer open and because S did not accept while R was present, the offer probably terminated upon R's departure. There is probably no valid acceptance. However, S's message would probably operate as a counter offer.

## **RITA v. MARY**

### Common law

For reasons discussed supra, the common law would probably apply to this contract.

### **Formation**

#### Offer

Defined supra

Again, the flyer would probably not be an offer, but an invitation to bid.

Mary called R and left a message on R's machine. The messages [sic] stated that if R would paint Mary's house for \$2,000, the job was R's job. This message would probably contain all the essential terms of an offer.

Quantity: One house  
Time of performance: Within the reasonable future  
Identity of the parties: Mary and R  
Price: \$2,000  
Subject matter: The house

All the terms for a common law offer are present. When Mary called R and left a message on the machine, she manifested a desire to be bound to the contract, thus indicated present contractual intent. Because the message was left on the machine, the intent was communicated to R, the offeree.

Additionally, this offer looks toward a return performance, not a return promise. Therefore, a court may construe the contract as a unilateral contract.

### Revocation

This occurs when an offeror attempt [sic] to withdraw her offer.

When R started painting, Mary came running out of the house, stating that she had a different contractor. Mary will assert that she effectively revoked her offer before R accepted, since R never accepted by a return promise (see infra).

In order to defeat this attempted revocation, R will assert the detrimental reliance on offer rule.

### **Detrimental Reliance on offer rule**

This rule provides that where the offeror should reasonably foresee that her offer would result in reliance on the part of the offeree, resulting in action or forbearance to act, the offer will be held open for a reasonable time to avoid injustice.

Here, Mary made an offer which she should have reasonably foreseen as to induce action on the part of R. R acted, purchasing the paint and beginning performance. A court will probably hold this offer open for a reasonable time to avoid injustice.

Additionally, should R's arguments fail, she would be able to assert the unilateral contract rule.



## **Unilateral contract rule**

Where an offeror makes an offer which can be accepted only by full performance, the offer will be held open once performance begins, in order to avoid injustice.

As mentioned supra, the offer looks to a unilateral contract. Therefore, a court will probably see that R began performance, and will thus hold the contract open for a reasonable time to allow R time to complete performance.

### Acceptance

Defined supra

R never orally assented to the terms of the offer. However, she appeared at Mary's house and began painting. As mentioned supra, the offer looked to a unilateral contract. Therefore, R's performance of the offer would probably be sufficient grounds upon which to argue an acceptance.

Therefore, since R began performance and since the offer would probably be held open for a reasonable time, a court probably will find a valid contract.

### Consideration

This is a bargained for exchange, with each party incurring detriment and receiving a benefit.

R would incur the detriment of painting the house. S would receive the benefit fo a newly painted house. S would incur the detriment of paying. R would receive the benefit of the payment.

A valid contract probably exists between R and Mary.

## ANSWER B TO QUESTION 1

### Service Contracts

All 3 potential contracts deal with services and therefore are governed by common law contract theories. A contract requires an offer and acceptance which show mutual assent and consideration.

### Marvin and Rita

Offer: An offer is the manifestation of the present intent and ability to enter into a bargain that is communicated to the offeree.

In this case, Marvin will attempt to take advantage of the \$2,000 price to paint his large home by claiming that when Rita distributed hundreds of flyers stating “Rita can paint your home for \$2,000—call Rita now to accept this offer.” It was an offer. An offer must have specific and definite terms. Traditionally, an offer had to have quantity, time of performance, the identity of the parties, the price and the subject matter. Marvin will argue that it was definite enough because the subject matter (house), parties (Marvin & Rita), quantity (1 house) and price were all present. In fact, this would be enough modernly as the courts will construe “reasonable” terms in order to complete the contract. However, unfortunately for Marvin it is well establish[ed] that advertisements are only “invitations to negotiate” and are rarely specific enough to amount to an offer. It is debatable whether hundreds of flyers are simply invitations to negotiate or offers. If the flyer had been placed on Marvin’s house then he would have a stronger argument that Rita did in fact intend to be bound by the terms in her flyer. However, Rita placed the flyers at a neighborhood grocery store where neighborhood residents would be likely to see them. Marvin, who lived in the adjoining town was apparently not one of the people that Rita had intended to contract with. Therefore, it cannot be firmly established that there was an offer by Rita.

### Acceptance

An acceptance is the unequivocal assent to the terms of an offer.

In the case of Marvin and Rita, Marvin clearly attempted to accept Rita’s offer by saying “I accept your offer to paint my home for \$2,000.” However, because no offer existed there was no power of acceptance in Marvin as he was not the intended person.

### Consideration

Valid consideration would exist in this case. Consideration is a bargained for exchange that is a legal detriment and benefit. In this case, Marvin paying \$2,000 and Rita painting the house.

However, because of the lack of a valid offer no contract exists between Marvin and Rita.

## Contract between Rita and Sue

### Preliminary negotiations

When Sue and Rita got together to discuss the particulars and go over Sue's home they were engaged in preliminary negotiations.

### Offer

Defined supra

When Rita told Sue she would paint her house for \$700 there was a valid offer as she clearly had an intent to be bound. The quantity (1 house) identity of parties (Rita and Sue) price (\$700), and subject matter (house) were all accounted for. The time of performance would be a reasonable time.

### Acceptance

Defined supra

When Sue told Rita "that is a pretty good price" and she would consider her options a valid acceptance had not yet occurred. However, this was also not a rejection of the offer nor a counter offer by Sue and the power of acceptance was not extinguished. It could be argued that when Sue said "I wish you could do the job for less" this was a rejection. However, rejections must be definite to be effective in either conduct or expressions such as "I reject your offer." This did not occur and therefore the offer was still open until Rita decided to revoke it or it lapsed.

When Sue called Rita's house the next morning a timely and effective acceptance occurred. An offer can be accepted at any time prior to revocation and is effective upon dispatch. Generally, acceptance must take place in the same manner as the offer. In both instances it was oral and therefore a valid acceptance.

### Consideration - defined supra

There is valid consideration as Sue is paying \$700 and Rita is obligated to paint the house. There is a valid contract.

### Defense to formation

#### Statute of Frauds

If either party wanted to get out of the contract it is arguable that they could argue that paint is a good and therefore falls within the statute of frauds requirement that contracts for goods over \$500 must be in writing. However, this argument is weak [sic] because

painting jobs are predominately a service provided by the painter and the cost of the paint does not compare with the cost of labor.

### Rita and Mary

#### Offer

Defined supra

When Mary called Rita and said “if you can paint my house for \$2,000 the job is yours” she made a valid offer to Rita although time of performance is also missing here. It is unclear whether this offer was for a bilateral or unilateral contract.

#### Unilateral Offer and Acceptance

It could be argued that Mary made an offer for a unilateral contract by essentially saying “if you paint my house I will give you \$2,000 dollars.” This appears to be what Mary was stating. If so, the offer can still be revoked at any time prior to acceptance and in this case acceptance was complete performance. However, modernly courts have held that if a person substantially performs on a unilateral contract that is an acceptance. However, the facts state that Rita “started working” and therefore there is no substantial performance and no acceptance and therefore no contract.

#### Bilateral Offer and Acceptance

If it is construed that Mary’s offer was intended to receive a promise as consideration instead of an act then it was necessary for Rita to accept by conduct or expression. Rita will argue that her conduct of beginning the painting clearly showed that she had accepted the offer and promised to paint the house. Mary will counter that she only wanted a promise to paint the house.

There is valid consideration.

There appears to be an enforceable contract.

## Question 2

Able was low on money and short on credit, so he borrowed money from a loan shark who was associated with organized crime. When Able failed to meet the repayment deadline, the loan shark told Able he had one more day to come up with the money or Able would find it “very, very painful.”

Frightened and desperate, Able decided to break into the home of Rich and steal a collection of valuable antique coins. (Able had done some carpentry jobs for Rich on occasion, so he was familiar with his home.) Able knew that the coin collection was kept in a safe in a small room in Rich’s home, so he asked Baker to help him with the heist. Baker was a master welder and Able knew Baker’s skills would come in handy if they were to steal the coins. Baker agreed and brought a blowtorch with him that night. Able and Baker easily gained entry to the house by cutting a hole in the back door and entered through the hole. They quickly disabled the alarm system and then Baker went to work on the safe with his blowtorch. They had nearly gotten the safe open when Able knocked over the blowtorch. It ignited some curtains nearby and the fire quickly spread. Soon the whole structure was ablaze. Able and Baker fled without having taken anything.

Sam and Carol lived next door to Rich and the fire soon jumped from Rich’s home to their residence. Carol woke up, smelled the smoke, and ran into the living room. Her husband, Sam, was sleeping on the couch. Carol was very angry with Sam. He had told her earlier that evening that he wanted a divorce and Carol now saw a chance for revenge. Carol ran from the burning house, leaving him asleep on the couch. By the time Sam awoke, the house was full of flames and heavy dark smoke. He tried to exit the house, but was quickly overcome by the fire and died.

What crimes, if any, have been committed by Able, Baker, and Carol, and what defenses should each assert? Discuss.

## ANSWER A TO QUESTION 2

### Crimes of Able and Baker

#### Solicitation

Solicitation occurs when a person counsels, solicits, incites, or requests another person to do an unlawful act. When Able “asked Baker” to help him with “the heist,” Able committed solicitation because he requested Baker to participate in a burglary and larceny (discussed infra).

#### Merger Rule

Solicitation merges with the target crime and with attempt and conspiracy. Therefore, although Able committed solicitation, he will most likely be charged instead with conspiracy and with the other crimes discussed infra.

#### Conspiracy

A conspiracy exists when two or more people are in an agreement to commit a criminal or unlawful act or to commit a lawful act by unlawful or criminal means. When Baker “agreed” to Able’s solicitation, a conspiracy was formed and both Able and Baker may be charged with conspiracy to commit burglary and conspiracy to commit larceny.

#### Burglary

Burglary, at common law, is the breaking and entering of the dwelling house of another during the nighttime with the intent to commit a felony therein.

Breaking – Able (A) and Baker (B) gained entry to Rich’s house by cutting a hole in the back door with a blowtorch. This constitutes a breaking because they made a hole.

Entering – the facts state that A and B entered Rich’s house through the hole they had made in the back door.

Dwelling – A and B broke into and entered Rich’s home, which is a dwelling.

Night – The facts state that B brought a blowtorch with him “that night,” which indicates the burglary occurred at nighttime.

Intent to Commit a Felony – the facts state that A and B intended to steal valuable antique coins. It is likely that the value of the coins was over \$500, which means that stealing them would be a felony, so intent to commit a felony is established. Even if it turns out that the coins’ value was [sic] less than \$500, most jurisdictions have statutorily modified the intent required for burglary to include intent to commit any theft, including petty theft.

Therefore, A and B can be charged with burglary.

### Attempted Larceny

An attempt occurs when a criminal intent becomes accompanied by an act which comes within close proximity of committing a crime.

Larceny is the trespassory taking and carrying away of the personal property of another with intent to permanently deprive the owner thereof.

A and B intended to steal Rich's valuable antique coins. This indicates that they had the criminal intent to commit larceny because the coins belonged to Rich, A and B had no right to them, and they presumably intended to permanently deprive Rich of the coins. They broke into the house with a blowtorch and disabled the alarm system. B then tried to get the safe open. Their breaking in and trying to get the coins from the safe were overt acts and they came within very close proximity of completing their goal of larceny.

However, because of the fire which A started when he knocked over the blowtorch, A and B were forced to flee. This cannot be considered as a withdrawal because it was not a voluntary withdrawal (they were forced to flee because of the fire) and because they were already in the zone of perpetration.

Therefore, both A and B can be charged with attempted larceny.

### Arson

Arson, at common law, is the malicious burning of the dwelling house of another. Here, since Rich's home was the location of the fire, the element of the dwelling house of another is met. Since the facts state that the "structure was ablaze" it indicates that the house was actually burned. Therefore the issue is whether the burning can be considered malicious.

While it appears that A and B did not have the intent to burn Rich's house, malice includes an intent to commit a dangerous felony. Therefore, a court may conclude that while they did not have specific intent to burn the house, their intent to commit a dangerous felony such as burglary and larceny will suffice for malice. If the court so determines, then A and B may be charged with arson.

A and B will argue this issue, especially because of the death of Sam as a result of the fire. They will maintain that they did not intend to start the fire (or cause the death, which is discussed below) and that it was an accident. However, in light of the fact that they were using a blowtorch, it seems foreseeable that a fire could start. B may argue that as a master welder, it was not foreseeable that he would start a fire with the torch. However, since B and A were co-conspirators, A's kicking over of the torch will be attributed as an act of both A and B.

Further, since the fire spread from Rich's house to Sam and Carol's house, A and B will be charged with arson as to both homes.

### **Homicide**

Homicide is the killing of one human being by another human being. Sam died as a result of the fire started by A and B and is therefore a homicide.

### **Causation**

#### **Actual Cause**

"But for" the fire started by A and B, Sam would not have died. Therefore, the fire was an actual cause of Sam's death. If the court determines, as is likely according to the discussion of arson supra, A and B will be deemed to be actual causes of Sam's death.

#### **Proximate Cause**

As discussed under arson, the fire was a foreseeable result of A and B's burglary and attempted larceny. However, A and B will argue that Carol's refusal to wake Sam was an intervening act which breaks the chain of causation. However, since it would have been just as foreseeable for Sam to have been alone in his home with no one available to waken him, and since it would have been foreseeable for Carol to have also died, the lack of awakening Sam will not break the chain of causation and A and B will be held to be the proximate cause of Sam's death.

### **Murder**

Murder is the killing of one human being by another human being with malice aforethought. Malice aforethought can be found through the commission of a dangerous felony, so A and B will be charged with the murder of Sam.

### **Murder in the First Degree**

Murder in the first degree can be charged as a result of a death that occurs during the commission of a dangerous felony, that is, through the application of the Felony Murder Rule.

Burglary is considered to be a dangerous felony which can be used for application of the felony murder rule. The death must also be found to be causally connected to the burglary. This is satisfied in this case because if A and B had not burglarized Rich's home with the blowtorch, the fire would not have started. Therefore, the death of Sam is directly attributable to the burglary and the felony murder rule will attach.



Therefore, A and B can be charged with the murder in the first degree of Sam.

## **Defenses**

### **Duress**

In addition to the arguments already discussed under each crime above, Able will argue that he acted under duress because the loan shark had threatened him with something “very, very painful.” However, the threat was related to a future harm, not an imminent one. Public policy would favor calling the police, not committing a burglary when a person is threatened. So the defense of duress will fail.

## **State v. Carol**

### **Murder**

Carol saw a “chance for revenge” and so chose not to awaken Sam to save him from the fire. The question is whether she can be charged with Sam’s murder or a related crime.

### **Omission**

Normally, the actus reus of a crime must be by intentional or volitional act. Here, Carol did not “do” anything to Sam to kill him. Her actus reus would be an act of omission in not awakening him. When a person has not created the situation which caused the death of another, that person is usually under no duty to rescue the endangered person. While under tort law, a close relationship like that of husband and wife may impose a duty of acting to save the other, criminal law is less likely to impose guilt for such a failure to act.

Carol did not start the fire which killed Sam and even though the facts indicate that she had the appropriate mens rea by wanting revenge and allowing him to die, Carol cannot be held criminally liable for the fire she did not start, nor for the death that resulted from that fire.

Therefore, Carol will not be charged with any crime related to Sam’s death.

## ANSWER B TO QUESTION 2

What crimes, if any, have been committed by Able, Baker, and Carol, and what defenses should each assert?

### I. Crimes of Able

#### A. Is Able guilty of solicitation?

Solicitation occurs when the defendant request [sic] that another commit a crime. It is not necessary that the other agree or even acknowledge the communication.

The facts tell us that Able asked Baker to help him steal the valuable antique coins. The act of asking is sufficient for Able to be convicted of solicitation.

#### B. Able for Conspiracy

Conspiracy occurs when the defendant agrees with another to commit a crime. The crime is complete at the time of the agreement. Thus the plan need not succeed for the defendants to be convicted.

The facts tell us that Baker agreed to Able's proposal to steal the coins.

Some jurisdictions require an act of furtherance of the crime for the defendant to be convicted of conspiracy.

Here Baker and Able did commit a number of act [sic] and almost succeeded in their plan had it not been for the fire. Therefore, both Able and Baker can be convicted of conspiracy.

#### C. Able for Burglary

Burglary is the breaking and entering of the dwelling house of another at night with the intent to commit a felony inside.

Modern courts have abandoned the "at night" requirement (common law) and have extended the "dwelling house" requirement to include any structure.

Since Able and Baker gained access to Rich's house by cutting a hole in the back door they most certainly committed a breaking and entering.

The facts tell us that the defendants entered Rich's home.

The facts also tell us that the defendants intended to commit larceny (steal the valuable coins).

Based on the discussion above, Able (and Baker) are guilty of burglary.

D. Arson

Arson is the malicious burning of the dwelling house of another. Mere charring of the structure is sufficient. Modern court [sic] have extended this doctrine to include commercial structures as well.

Was the burning malicious?

The facts tell us that the defendants did not intend to burn Rich's house. Therefore they will most likely be found not guilty of arson.

E. Murder of Sam

Even though defendants did not intend the death of Sam, under the felony-murder rule a defendant is guilty of second degree murder if he causes a homicide in the cause of committing an inherently dangerous felony.

A homicide is the killing of one human being by another.

Was burglary an inherently dangerous felony?

Burglary is an inherently dangerous felony because it involves the risk that the occupants of the home will be present at the time the defendants break and enter into the home and that a confrontation may result which may become deadly.

Therefore Able and Baker are most likely guilty of the death of Sam.

F. Able for attempted larceny

The crime of larceny occurs when defendant commits an [sic] trespassing taking of the personal property of another with an intent to permanently deprive them of that property.

An attempt is committed when the defendant has the mental state recognized for the commission of the target offense and has completed a substantial step toward the completion of the target offense but cannot be convicted of the target offense.

A lesser-included offense is an offense which consist [sic] of some but not all of the elements of another crime and no other elements.

The facts tell us that Able and Baker intended to steal the valuable coins. Since they were unsuccessful in stealing the coins, but were very close to doing so they can be convicted of attempt.

However, since larceny is a lesser included offense of the crime of burglary the defendants cannot be convicted of both.

## II. Crimes of Baker

### A. Conspiracy

See discussion above. Baker is guilty since he agreed with Able to commit larceny and took a substantial step.

### B. Burglary

See discussion above. Baker is guilty of burglary since he committed a breaking and entering of the dwelling house of Rich with an intent to commit a felony inside (steal the coins).

### C. Arson

See discussion above (Able). Just like Able, Baker will most likely be found not liable for arson since he lacked the malicious intent.

### D. Murder of Sam

See discussion above (Able). Similarly to Able, Baker will be guilty of second degree murder under the felony-murder rule.

### E. Attempted Larceny

See discussion above.

## III. Crimes of Carol

To decide whether Carol is guilty of a homicide we must examine the murder crimes. These fall into four categories; (1) First Degree, (2) Second degree (3) Voluntary Manslaughter and (4) involuntary Manslaughter.

Generally, all crimes require (1) mens rea - a requisite mental state, (2) actus reus - a voluntary act or an omission to act when one has a duty to act, (3) concurrence, & (4) causation – the act must cause the criminal result.

The general rule is that one has no duty to act to prevent the commission of a crime or a tort against another.

However, there are a number of exceptions to this rule. One has a duty to act when (1) he is related to the victim (i.e., spouse or parent, only close relatives) (2) contractual duty (as in guards) (3) [sic]

Did Carol possess the necessary mens-rea?

The facts tell us that Carol was angry at Sam because he had informed her that he desired a divorce. They also tell us that she “wanted a revenge”, and that she took advantage of the situation to execute that revenge.

Did Carol commit the necessary act?

As stated above, Carol does not have to perform an act, but a mere failure to perform an act when she has a duty to act reasonably under the circumstances to aid her husband.

Was there concurrence?

Yes, the mens-rea and actus reus concurred.

Was there causation?

Yes, Carol’s failure to wake up Sam caused his death. All that was necessary for Carol to do was wake him up. Therefore, Carol is guilty of second-degree murder.

#### IV. Defenses

##### A. Defenses of Able

##### (a) Duress.

Duress negates the intent to commit a crime. Where defendant has been threatened with physical force he may rely on the defense of duress. However, the force or the threat of force must be imminent where the force is to occur sometime in the future. The defendant cannot claim that he is under duress because the defendant had the ability to move around freely and could have informed the police or filed charges against the loan shark.

##### B. Defenses of Carol

Carol can assert the defense of depraved-heart. She can claim that the fact that Sam had asked her for a divorce had caused her to snap and that she was not capable of thinking straight or controlling her emotions. She will argue that her sentence should be reduced to voluntary manslaughter. One is guilty of voluntary manslaughter when he acts in the heat of passion (i.e., when they witness a spouse cheating), or when they rely on imperfect self-defense (i.e., when they thought that they had a right to use self-defense but the force they used was disproportionately greater than the force that was necessary). Since a lot

of time had passed between the moment Sam requested the divorce and the time of Carol's failure to wake him up this defense will most likely fail.

### Question 3

Paintco intended to place a bid on the painting work for a large government project, the deadline for which was April 16. Paintco's president published an advertisement in a local trade paper asking paint suppliers to place bids with Paintco for the furnishing of 10,000 gallons of special paint in accordance with the government's specifications. The advertisement, published March 1, stated that Paintco was going to bid on the government job, and asked all interested parties to submit their bids, in writing, on or before April 15, specifying that the bids were to be "irrevocable for 30 days."

On the evening of April 15, Ritzcorp's president telephoned Paintco and submitted Ritzcorp's bid orally by leaving a message on Paintco's answering machine, which was equipped with a voice-decoding feature that translated telephone messages into a written printout. The telephone message, which Paintco's president both heard and read that evening, identified the speaker as Ritzcorp's president and stated that his company would supply 8,500 gallons of paint to Paintco at a price of \$10 per gallon. The telephone message also stated that the bid price did not include the cost of delivery, that any acceptance of Ritzcorp's bid must be in writing and must be received by Ritzcorp on or before May 1.

Because Ritzcorp's bid was the lowest, Paintco used it to compute the price of its own irrevocable bid to the government the next day. On May 1, Paintco was notified that it had won the government contract. The same day it mailed a letter to Ritzcorp stating: "We accept your offer of April 15, but ask that the paint be fully warranted as to quality and that you arrange for delivery of 10,000 gallons of the paint to the job site." The letter arrived at Ritzcorp's offices on May 2. Ritzcorp dispatched an e-mail to Paintco that very afternoon, stating that in light of an unexpected rise in the cost of ingredients it was only prepared to offer a price per gallon of \$12, and that any paint Paintco chose to purchase would be sold "as is," without any warranties. After subsequent talks between the parties failed to resolve their differences, Paintco promptly secured a commitment from the next lowest bidder, BrushCorp, to supply all 10,000 gallons at a price of \$14 per gallon. Paintco then immediately wrote a letter to Ritzcorp declaring that Ritzcorp had repudiated its contractual commitment to supply paint, and threatening to hold it accountable for all damages. Paintco completed the government job using the paint supplied by BrushCorp.

What action(s) can Paintco reasonably assert against Ritzcorp, and what would be the likely result of these action(s)? Discuss.

## **ANSWER A TO QUESTION 3**

### **PAINTCO v. RITZCORP**

#### **U.C.C. v. COMMON LAW**

The U.C.C. governs contracts for the sale of goods. Goods are moveable and identifiable chattle at the time of sale.

Paint is a moveable and identifiable chattle at the time of sale.

Thus, this contract will be governed by the U.C.C.

#### **MERCHANTS**

One who regularly deals in the sale and manufacture of goods and who holds himself out to have special skill or knowledge in said goods.

Paintco (P) regularly deals in the sale and manufacture of paint, and holds himself out to have special skill or knowledge in paint.

Ritzcorp (R) regularly deals in the sale and manufacture of paint, and holds himself out to have special skill or knowledge in paint.

Both P and R will be held by a higher standard of good faith.

Thus, both parties are merchants.

#### **PRELIMINARY NEGOTIATIONS**

##### **ADVERTISEMENT**

Here, the facts indicate that P made an [sic] public offer to all subcontractors inviting them to place their bids with P. In [sic] invitation to bid is usually held to be an advertisement and not an offer.

There is a valid advertisement for an invitation to bargain.

Although P was not making an offer, the courts will find that as a merchant, P must keep the offer open in good faith for a period of no more than 30 days.

The parties are in preliminary negotiations.



## **OFFER**

An outward manifestation of present contractual intent which is certain and definite in its terms and which is communicated to the offeree.

Here, the facts indicate that R made an outward manifestation of present contractual intent. Under the U.C.C. the only element required for a valid offer is the quantity term. All the other terms that are not present will be determined in a reasonable way.

Quantity - 8,500 Gallons

Time for performance - April 16<sup>th</sup>

Identity of parties - P and R

Price - \$10/Gallon = \$85,000

Subject Matter - Paint

Therefore, under the U.C.C. all the required terms are present.

## **MERCHANT'S FIRM OFFER RULE**

A signed written offer by a merchants [sic] which promises that it will be held open for a time stated without consideration will be held open (or if time is stated then for a reasonable time) taken that the offer does not stay open for more than 3 months.

The facts indicate that when R made the offer it promised that the offer would be held open until May 1.

Here, P will argue that there was no writing but that the offer was made orally. The facts tell us that the oral offer was translated into a written document. The courts will probably find that the signature requirement would be satisfied if there was an electronic type of R's name or company name.

The courts will probably construe this oral offer as a written document based on the facts.

Thus, there is a valid offer.

## **ACCEPTANCE**

An outward manifestation of present contractual intent which is certain and definite in its terms.

Since this contract is being governed by the U.C.C. its acceptance will be determined by U.C.C. 2-207.

### U.C.C. 2-207

Where an offeror makes a seasonable [sic] expression of acceptance and assent to the terms of an offer, which may be accepted with additional or different terms unless acceptance is expressly limited to the terms of the offer.

Here we find that on May 1 P sent written acceptance to R of its mutual assent to the terms of the contract.

However, the facts tell us that the acceptance was made with additional and different terms.

There are three ways in which an additional or different term can be excluded from an acceptance:

1. Acceptance is expressly limited to the terms of the offer
2. The Acceptance materially alters the contract
3. The Acceptance does not give the offeror reasonable time to accept the additional or different terms.

### Additional Terms

The additional term was that P asked R to fully warrant the quality of the paint.

In the facts at issue the court will find that the warranty for merchantability of the product was not expressly limited to terms of the offer, and that this additional fact did not materially alter the contract.

In addition R had a reasonable time to reject the terms of the offer.

Thus, the courts will find that this warranty promise will be included in the acceptance.

### Different Terms

The different terms was [sic] that P asked R for 10,000 gallons instead of the 8,500 gallons.

Where there are different terms two rules will determine whether they stay in the acceptance or not:

### Knockout Rule

The different terms will be knocked out of the contract if they materially alter the contract.

In this situation the increase of the gallons from 8,500 to 10,000 will be held as materially altering the contract.

Thus, this terms [sic] will be knocked out of the contract.

### Dropout Rule

The different terms will be dropped out if they materially alter the contract.

Since this different term materially alters the contract it will be dropped out of the contract.

Thus the courts will find that the warranty term will be included in the terms, but that the increase in gallons will be excluded.

### **CONSIDERATION**

A bargained for exchange of legal detriment.

P bargained for \$10/gallon, his detriment, in exchange for 8,500 gallons, his benefit. R bargained for 8,500, his detriment in exchange for \$10/gallon.

Thus, there is valid consideration.

### **DEFENSES**

#### STATUTE OF FRAUDS

##### Contracts for the sale of goods of \$500 or more

Here the facts indicate that this contract was for the price of \$85,000. Thus a writing would be required under the U.C.C. Statute of Frauds.

Since a sufficient memorandum will suffice for the Statute of Frauds, the written agreements that have been sent between the parties will take the contract out of the Statute of Frauds.

Thus, the Statute of Frauds will not apply.

### **MODIFICATION**

Under the U.C.C. a modification can be made to the contract without consideration, but in good faith.

Here the facts indicate that R sent a written e-mail to P stating that he would like to modify the contract due to unexpected rise in the cost of the gallons.

An unexpected rise in the cost of the gallons will not be acceptable since the party should have foreseen or had a reason to know of the change in price.

Also, R attempted to sell the gallons as is.

Under the U.C.C. any modification that attempts to change the warranty term will be considered to materially alter the contract and thus be invalid.

Here the courts will find that under the U.C.C. 2-207 Battle of Forms discussed supra, these terms would materially alter the contract.

Thus, these terms will not be considered as valid modifications.

## **CONDITIONS**

### **IMPLIED IN FACT CONDITION PRECEDENT OF GOOD FAITH**

Every contract has an implied in fact condition precedent of good faith.

In this case, R would be required to ship, in good faith, the gallons, before P had a duty to make payment under the contract.

### **CONDITIONS SATISFIED OR EXCUSED**

#### **ANTICIPATORY REPUDIATION**

R will argue that P repudiated the contract and thus excused his condition to make payment.

#### **DUTY**

R has a duty to ship 8,500 gallons of paint for \$10/gallon.

#### **DUTY DISCHARGED**

#### **IMPRACTICABILITY**

R will argue that it was impracticable for him to perform under the contract since the price increased from \$10 to \$12. However, based on the 10 TIMES RULE, there is no impracticability.

Thus, there is no impracticability.

## FRUSTRATION OF PURPOSE

R may argue Frustration of purpose, but there will be no discharged [sic] because there was not objective frustration of purpose for the contract.

## IMPOSSIBILITY

R may argue Impossibility, but the court will find not destruction of the goods or the contract.

## **BREACH**

### MAJOR BREACH

R committed a major breach when it did not agree to ship the goods for \$10/gallon. This breach went to the heart of the contract.

## **REMEDIES**

### GENERAL DAMAGES

P will be able to recover his loss of expectancy under the contract. He will be placed in the position he would have been had the contract not been breached.

#### Cover

P mitigated his losses when he bought the goods from Brushcorp (B). He will be able to recover the difference in the contract price and the cost of cover.

### SPECIAL DAMAGES

If the damages were consequential and foreseeable at the time of the contract, then P will be able to recover damages under Hadly v. Baxendale.

### SPECIFIC PERFORMANCE

If the goods were considered special or unique P may be able to recover specific performance.

### **ANSWER B TO QUESTION 3**

#### **PAINTCO AND RITZCORP**

Does the UCC apply?

The UCC applies to all transactions in goods. Goods are moveable, tangible property.

Here, the transaction is for the sale of paint, moveable tangible property.

Therefore, the UCC applies.

Are the parties merchants?

Merchants are persons who regularly deal in that type of goods or, through their occupation, have special knowledge and skill pertaining to the goods.

Here, Paintco is a professional painting company, who regularly buys paint. Ritzcorp sells paint.

Therefore, both parties are merchants.

Valid enforceable contract?

In order to have a valid enforceable contract, there must be an offer, acceptance, consideration and lack of defenses.

Was the ad an offer?

An offer is a manifestation of present contractual intent, containing definite and certain terms, communicated to an identified offeree.

An advertisement such as a printed flyer or trade paper ad is normally considered to be an invitation to make offers, because the offeror could not possibly accept an infinite number of acceptances.

Here, Paintco's ad was an invitation to negotiate or make offers.

Therefore, the ad was not a[n] offer.

Was the phone call an offer? Offer defined supra.

Here, Ritzcorp was making an oral offer with definite terms and communicated directly to Paintco.

The ad said to submit the offers in writing, but Ritzcorp departed from this. Since the ad was not an offer, its stated method of acceptance did not have to match the terms [of] Ritzcorp's ad.

Therefore, Ritzcorp made a valid offer.

#### Acceptance:

Acceptance is an assent to the terms of the offer. It can be made in the manner indicated by the offer, or in any reasonable manner.

Here, Paintco accepted the offer for 8,500 gallons. Their assent was made in the manner stated in the offer (by May 1 and in writing).

The letter satisfied the writing requirement.

#### Mailbox rule:

Acceptances are effective on dispatch, if the acceptance was made in the manner required by the offer.

Here, the acceptance was in writing and dispatched by May 1.

Therefore, the mailbox rule applies and there is a valid acceptance.

#### Consideration:

Consideration is a legally sufficient bargained-for exchange, inducing current performance, a detriment to the promisee, and binding on both parties.

Here, the agreement is to exchange paint for money. It [sic] as bargained for, will induce performance and will be binding. It is a detriment to both parties.

Therefore, there is valid consideration.

#### DEFENSES:

##### Statute of frauds:

The statute of frauds requires all contracts for goods of \$500 or more to be in writing.

Here, the statute applies, because the paint would cost 8,500 times \$10 = \$85,000.

Therefore, there can be a possible statute of frauds defense.

Merchant's confirmatory memorandum to satisfy the statute of frauds:

A merchant's confirmatory memorandum can satisfy the statute if it is in writing and would serve to bind the sender, the recipient has reason to know its contents and the recipient does not object within 10 days.

Here, the letter from Paintco would be binding on Paintco, Ritz[corp] has reason to know of its contents because it is in response to their offer and Ritzco[rp] has not objected.

Therefore, the letter will satisfy the statute of frauds and there is a binding contract.

Terms of the contract:

Between merchants, the contract will contain the terms of the offer and will include any new terms in the acceptance unless:

1. The offer did not allow new or changed terms
2. The new terms are material
3. The terms are objected to within a reasonable time.

Material terms are those that would result in the significant loss of the benefit of the bargain or result in surprise or hardship.

Here, Paintco accepted for the offer of 8500 gallons at \$10.

The new term of "fully warranted" will be new if the warranty was not already implied.

Since a warranty of merchantability is already implied by law, this term is not new and will not change the deal.

The change of 8500 gallons to 10,000 is material. Even though Paintco wanted 10,000 originally, Ritzco[rp] only offered 8500 and Paintco accepted that.

Therefore, the terms are for 8500 gallons at \$10 each and include the normal implied warranties.

Anticipatory repudiation (AR):

AR occurs when a party unequivocally indicates that it will not perform on the contract.

Here, Ritzco[rp] indicated that it was only prepared to deal at \$12 per gallon. This created doubt as to their intent to perform.

Therefore, Paintco may have grounds to treat that \$12 price statement as AR.



### Assurances under the UCC:

When a party indicates that it might not perform under a contract, the other party has grounds to demand assurances. The assurances can be in any manner generally accepted in that industry, but must provide a sense of confidence that performance will be forthcoming.

Here, when Ritzco[rp] said it was only prepared to offer a price of \$12, this created doubt of their intent to perform.

Paintco tried to obtain assurances by “subsequent talks,” which would probably be the first step in that industry.

Therefore, when they “failed to resolve their differences” Paintco was within its rights to declare that Ritzco[rp] had repudiated.

### Remedy for AR:

When AR occurs, the [o]ther party may consider the contract rescinded as to the executory part, may sue immediately, may sue on law date or may ignore the AR and urge performance. The non-repudiating party may sue for breach.

Here, Paintco has chosen to declare breach.

Therefore, Paintco can recover for breach.

### Damages for breach:

In the case of breach, the non-breaching party may effect cover in the market and sue for market differential and indicentials [sic] and consequential damages. This will put the non-breacher in the same position as if the contract had not been breached. The non-breaching party has a duty to mitigate by avoiding any damages where feasible.

Here, the acceptance was for 8500 gallons at \$10. Paintco covered at \$14. The additional costs to Paintco were \$4 per gallon X 8500 gallons or \$34,000.

There are no apparent consequential damages, since Paintco was able to mitigate by covering.

Therefore, Paintco can recover \$34,000 plus indicentials [sic].

## Question 4

Peter, walking along the street at 10:00 p.m. on April 20, urgently needed to find a restroom. Just ahead was Dell's Supper Club ("Dell's"), which Peter had patronized a few times in the past. There was a sign on the door of Dell's that said "Restrooms for Patrons Only." He was not familiar with Dell's restroom. He entered the dimly lit club and was directed by a waitress toward a door marked "MEN". Peter opened this door and stepped into an even darker room. Just inside the door, Peter felt for and pushed a light switch, but no light came on because the bulb in the ceiling fixture was burned out. Nevertheless, Peter walked towards what he thought was the toilet, but tripped over a step, fell, and suffered severe cuts and bruises.

Later that night at Dell's John ordered a steak with mushrooms. Dell's used canned mushrooms purchased from Acme Foods, which three weeks earlier had discovered that some of its canned mushrooms had been improperly prepared and if eaten could cause botulism. Acme Foods notified all its customers of the problems with the canned mushrooms and offered to replace any cans of mushrooms purchased from them. Dell's received this notice, but disregarded it. John was served some of the mushrooms in question and as a result contracted botulism, recovering only after five days of severe illness and hospital treatment.

At 6:00 a.m. the next morning Carl, who was paid to pick up the garbage at Dell's, drove to the back of the club to carry out his duties. He did not see Dell's large guard dog chained next to the bin to keep out trespassers, and the dog was asleep when Carl entered the bin. As Carl walked to the bin, he startled the dog and it attacked Carl. The dog grabbed Carl's shoe and held on tightly. Carl managed to get his foot out of the shoe, ran to the fence surrounding the back of the restaurant, and climbed over it to get away from the dog. Once he reached the top of the fence, he fell to the ground on the other side and broke his leg.

What actions could Peter, John and Carl assert against Dell's, what defenses should Dell's assert, and what would be the probable results? Discuss.

## ANSWER A TO QUESTION 4

### Negligence

Under tort law negligence is a failure to act as a reasonably prudent person in the same circumstances. A prima facie case of negligence requires a showing of duty, breach, proximate and actual causation, and damages.

#### 1. Peter v. Dell's (P v. D)

##### A. Negligence

##### 1. Standard of care

Under tort law the standard of care is that of a reasonably prudent person in the same situation.

Here D is a landowner because P was injured on their property.

Therefore D is held to the standard of care of other landowners.

##### 2. Duty

Under common law there was no general duty to act affirmatively to protect others.

Under Palsgraf, Cordozo argued that D owes a duty only to those in the zone of danger to protect foreseeable plaintiffs from foreseeable harm.

Andrews argued that if D owes a duty to anyone he owes a duty to everyone.

Here there is a special duty because D is a landowner as discussed above.

The specific level of duty D owes to P depends on the status of P.

##### A. P as trespasser

Under common law landowners owed no duty to trespassers. Modernly landowners owe a duty to known trespassers to avoid from actively causing them harm from the landowner's use or activities on the land.

Here P may be considered a known trespasser because although he was not going to buy anything at D's the waitress knew that he was going into the restroom marked for patrons only because the waitress directed him there.

Therefore if P is considered a known trespasser D owed him a duty not to actively cause him harm from their use or activities on the land.

#### B. P as licensee

Under tort law landowners owe a duty to licensee, those on the property with permission but not to convey a benefit to landowner, to warn them of known artificial dangers on their land.

Here P may be considered a licensee because although he did not intend to buy anything this time he had visited a few times in the past and as D was a "Supper Club" it may be reasonable to find that P was licensed to enter D's land.

Therefore if P is considered a known trespasser D owed him a duty to warn of known artificial dangers on the land.

#### 3. Breach

Under the Learned Hand Calculus breach can be found where the burden of preventing the harm to P combined with the social utility of D's acts are not outweighed by the likelihood of harm occurring to P times the magnitude of harm which might occur.

Here the burden of preventing the harm to P may have been small if the bulb has been out for awhile and no one at D's inspected the restroom periodically.

Here there is no social utility in not checking the restrooms.

Here the likelihood of injury is high because it is reasonable to find that if a lightbulb is burnt out that someone may hurt themselves in the dark.

Here the magnitude of harm is high because a restroom is a potentially dangerous place in the dark and someone could fall and hit their head causing serious harm or even death.

Therefore D breached his duty to P.

#### 4. Actual cause

Under tort law actual causation will be found where but/for the negligence of D the plaintiff would not have been harmed.

Here but/for D's negligence is [sic] not changing the lightbulb P would not have been harmed because P would have seen the step and not tripped.

Therefore D is an actual cause of P's harm.

## 5. Proximate cause

Under tort law P's injury must not have occurred in a way to [sic] unforeseen or removed from the negligent acts of the defendant.

Here P's injury was foreseeable because as discussed above P fell because there was no light and it is reasonably foreseeable that if there is no light in a bathroom someone could get hurt.

Here there are no intervening acts because although the bulb burnt [sic] out it[s] not unforeseeable, because bulbs burn out all the time.

Therefore D is the proximate cause of P's harm.

## 6. Damages

Under tort law victims of negligence must suffer damages in order to be compensated.

Here P suffered damages because he suffered severe cuts and bruises.

Therefore P suffered compensable damages.

### B. D's defenses

#### 1. Contributory negligence

Under tort law contributory negligence is a minority doctrine that any negligence by P acts as a complete bar to recovery. Even in a contributory negligence jurisdiction P can recover if D had the "last chance" to prevent the harm to P.

Here there if [sic] contributory negligence because P saw that the light didn't come on but went into the restroom anyway.

Here D did not have the last change [sic] to prevent P's harm because P could have avoided the harm at the last change [sic] by not entering.

Therefore in a contributory negligence jurisdiction D would have a defense to P's claim of negligence.

#### 2. Comparative negligence

Under tort law comparative negligence is a majority doctrine that any negligence by P is not a bar to recovery but acts to reduce the damages payable by D by the percentage that P's own negligence contributed to his own injuries.

Here as discussed above P was also negligent in entering a dark room.

Therefore in a comparative negligence jurisdiction any award for damages to P would be reduced by the percent of his own negligence.

### 3. Assumption of the risk

Under tort law if P knowingly and voluntarily assumes the risk of his own actions it is a complete bar to recovery.

Here P knew that the room was dark but he did not know that there was a step in the room.

Therefore although he voluntarily entered the room he did not do so with a complete knowledge of the risk he was assuming and assumption of the risk fails as a defense to D's negligence.

## 2. John v. Dell (J v. D)

### A. Strict liability in tort

Under tort law those in the chain of marketing are strictly liable for injuries caused by defective products.

#### 1. Manufacturing defect

Under tort law a manufacturing defect exists when a product is not produced as designed and such manufacturing defect causes injury.

Here there is a manufacturing defect because the mushrooms were improperly prepared and could cause botulism.

#### a. Consumer expectation test

Under the consumer expectation test a product defect exists if the product fails to function as a reasonable consumer would expect.

Here there is a failure of the consumer expectation test because a reasonably [sic] consumer would not expect a mushroom to cause botulism.

#### 2. Proper plaintiff

Under strict liability in torts a duty is owed to foreseeable users and those foreseeably affected by the defective product.

Here there is a foreseeable user because it is foreseeable that a restaurant would buy mushrooms and use them in food they served to their guests.

Therefore J is a foreseeable user.

### 3. Proper defendant

Under strict liability in torts all those in the chain of marketing a defective product are liable for the harm caused.

Here D is in the chain of marketing because they sold the mushrooms with the steak they served to J.

Therefore D is a proper defendant.

### 4. Actual cause

Supra

Here D is the actual cause of J's harm because but/for them [sic] serving the mushrooms J would not have been harmed.

### 5. Proximate cause

Supra

Here D is the proximate cause of J's harm because contracting botulism is a foreseeable result of serving bad mushrooms.

### 6. Damages

Supra

Here P suffered damages because he got sick and had to go the hospital.

### 7. Defenses

Here there is no evidence that J was aware of the risk or that he was in any way negligent.

Therefore D has no defense to J's claim of strict liability.

## B. Negligence

The discussion for negligence mirrors the discussion for strict liability in tort with the exception that negligence requires a showing of breach while strict liability does not.

## 1. Breach

Supra

Here the burden of preventing the harm would have been to not disregard the notice they received warning of the danger.

Here there is no social utility in not reading the notice.

Here the likelihood of harm is high because Acme told them it was.

Here the magnitude of potential harm is high because botulism is a serious illness requiring hospitalization.

Therefore D breached their duty to J and is liable for negligence.

## C. Warranty

Under tort law all products carry with them an implied warranty of merchantability that they are fit for their intended use.

Here mushrooms are intended to be used as food.

Here the mushrooms were not fit for use as food because they caused botulism.

Therefore D breached the implied warranty of merchantability.

## 3. Carl v. Dell (C v. D)

### A. Strict liability

Under tort law defendants are strictly liable for harm caused by wild animals or domestic animals who are known to be dangerous.

Here there is an animal known to be dangerous because it is reasonable to find that a large guard dog kept chained in a fence to keep out trespassers would be a danger to anyone he encountered.

Therefore D is strictly liable to C for the damage done by the guard dog.

### B. Actual cause

Supra

Here but/for the guard dog C would not have climbed the fence and fell, breaking his leg.



Therefore D is an actual cause of C's harm.

C. Proximate cause

Supra

Here it is not unforeseeable that if a dangerous dog attacked someone they would try to get away and get injured in the attempt.

Therefore D is the proximate cause of C's harm.

D. Damages

Supra

Here C is injured because he broke his leg.

Therefore C suffered compensable injuries.

E. Defenses

Here there is no evidence that C was aware of the risk because he did not see the dog and it was asleep when he entered the bin. There is also no evidence that C was in any way negligent.

Therefore D has no defense to C's claim of strict liability.

2. Negligence

Here as discussed above D can be found to be negligent in regards to C if it is found that he owed a duty and breached that duty to C.

A. Duty

Supra

Landowners owe a duty to invitees to warn of hidden dangers on the property.

Here C can be found to be an invitee because he was on the property to incur a benefit to D, the removal of the garbage.

B. Breach

Supra

Here D breached the duty to C because they did not warn of the dangerous dog on the property.

C. Actual cause

Supra

D. Proximate cause

Supra

E. Damages

Supra

F. Defenses

Supra

## ANSWER B TO QUESTION 4

### 1. Peter v. Dell's

Peter may be able to recover damages against Dell's for his injuries if he is able to prove the elements of negligence. In order to prevail in a negligence suit, Peter would have to show that Dell's had a duty of care to him which they breached, causing him damages.

**Duty:** A person ordinarily owes a duty of care to control their own conduct to prevent injury to other people that may result from the things they do. The duty owed may be based on statute, contract, relationship, admission of the duty, or creation of the peril. In this case, duty based on relationship is the important factor.

Here, the relationship between Peter and Dell's is important. Peter has gone onto the property of Dell's to use the restroom, even though Dell's has posted signs that indicate the restrooms are for customers only. Dell's may want to consider Peter a trespasser, and thus owed no duty. However, it is reasonably foreseeable that persons may come in off the street to use the facilities; if this were not so, then Dell's would not have posted the sign restricting access to their customers only. Peter is still not a licensee or invitee in this case, but because his trespass is either expected or common, Dell's owes a duty of care to him to warn of artificial hazards and to correct those that can be reasonably fixed.

Therefore, Dell's owes a duty of care to Peter.

**Breach:** A person has breached their duty of care when their conduct does not rise to the level required to protect others.

Here, Dell's could have replaced the bulbs making the bathroom area so very dark. Under the Hand analysis, if the burden of the precaution is less than the magnitude of the injury times its probability, then a breach has occurred. The burden of replacing a light bulb is small, as is the placing of a sign or notice that there are steps ahead. On the other side of the equation, the probability that someone will trip on the steps in the dark is great, and the magnitude of the possible injury is also great.

Therefore, Dell's has breached its duty of care to Peter.

**Causation:** In order to be liable, the defendant's conduct must be both the actual and proximate cause of the plaintiff's injury.

Actual cause is found when the defendant's conduct is the but-for cause of the injury, or in some cases a substantial factor in the injury.

Here, since the burned out light and lack of warning led directly to Peter's injury, Dell's breach of duty if [sic] the actual cause of the harm.

Proximate cause is found when there are no superseding, intervening events.

Here, there are no events intervening between Peter's entry into the restroom area and his accident due to the lack of lighting and signs.

Therefore, Dell's breach of its duty will be found to be the actual and proximate cause of Peter's injury.

**Damages:** In order to prevail, the plaintiff must show damages.

Here, the facts state that Peter suffered severe cuts and bruises from his fall.

**Defenses:** Dell's may have some defenses to this action. Defenses include contributory negligence (if the jurisdiction follows contributory negligence), comparative negligence, and assumption of the risk. In contributory negligence, if the plaintiff has any fault in the injury he suffered, then he is barred from recovery. In a comparative negligence jurisdiction, the plaintiff may recover according to the degree of fault assigned to the parties. In pure comparative negligence, he will recover his portion of damages, regardless of how small or large it may be. In modified comparative negligence jurisdictions, he will recover if his fault is 50% or less of the total fault. Under assumption of the risk, Peter would be barred from recovery if it was found that he knew of the risk and voluntarily engaged in the conduct anyway.

In this case, Dell's may assert that by walking into a dark, unfamiliar room, Peter contributed to his own injury. This would create a degree of fault for Peter. There may be some contributory or comparative negligence found here. Since Peter was unaware that there were steps that could harm him, assumption of the risk would not apply here.

**Result:** In a contributory negligence jurisdiction, Peter would be barred from recovery based on walking into a dark unfamiliar room. In a comparative negligence jurisdiction, he would recover according to the degree of fault he was assigned by the court.

## 2. John v. Dell's

John may have a cause of action against Dell's under strict liability in tort if he can show that he is a proper party, that the product was defective, that the product caused him harm, and he suffered damages.

**Parties?** Proper parties to a suit such as this must be foreseeable users of the product.

In this case, John was a patron of a restaurant serving canned mushrooms which were defective and made him ill. A restaurant customer is a foreseeable user of food supplied to that restaurant.

Therefore, John is a proper party to sue in strict liability.

**Defective product?** The product must be shown to be defective either in design, manufacture, or warnings.

Here, the product was produced improperly and could cause botulism. The factory promptly notified its customers of the problem and offered to replace the mushrooms. Clearly they knew that the product was defective. The question is whether Dell's knew of the defect. The facts state that Dell's received the notice but disregarded it.

Therefore, the product is clearly defective in manufacture, and the parties involved were aware of the defect.

**Was Dell's conduct the actual and proximate cause of John's harm?** As discussed above, Dell's conduct must be shown to be both actual and proximate cause of the harm to John.

Here, Dell's knew of the potential for botulism poisoning from the mushrooms, because they were warned of the possibility, but they chose to ignore the warning and serve the mushrooms anyway. This conduct clearly cause [sic] the mushrooms to be served to John, causing him illness. There were no other intervening or possible sources of the harm to John.

Therefore, Dell's conduct in serving the mushrooms is the actual and proximate cause of John's injury.

**Damages?** John must show that he suffered some harm due to the actions of Dell's.

Here, the facts state that John suffered five days of illness and hospital treatments.

Therefore, John suffered damages from Dell's conduct in serving the mushrooms.

**Defenses?** In strict liability in tort, there are no provisions for contributory negligence. Dell's would only be able to try to claim that either John knew there was a risk of poisoned mushrooms and ate them anyway, or that he was somehow at fault in eating them. Neither possibility seems likely.

**Conclusion:** Dell's will be found liable in strict liability in tort for the illness and damages John suffered due to eating the mushrooms.

### **3. Carl v. Dell's**

Carl may be able to recover damages from Dell's in strict liability due to his injuries from Dell's guard dog if he can show that Dell's knew that the dog had dangerous or vicious propensities to harm people. He would also have to show causation and harm in order to collect.

A person may be held strictly liable for the actions of domestic animals if the animal has a propensity to be vicious. If the dog has bitten before, or been trained to be vicious, then the owner is strictly liable without fault for any damage the dog may do to others.

Here, the facts do not state if Dell's dog has actually ever bitten anyone. However, the facts do state that he is a guard dog, that it is chained up to keep trespassers out, and that [it] is kept in back near the trash bins. All these factors would seem to indicate that the dog is expected to be quite fierce and protective of the property, and may indeed demonstrate a degree of viciousness.

Therefore, by having such an animal, even chained up, Dell assumes the liability of any injuries the dog may inflict.

**Causation?** Discussed above. Actual and proximate cause required.

Here, the threat of the dog caused Carl to climb the fence from which he fell and broke his leg. The dog was the actual cause of the injury. In addition, Dell's fence was obviously high enough that falling from it, escaping from the dog, was sufficient to cause harm.

Therefore, Dell's is the actual and proximate cause of Carl's injury.

**Damages?** Carl must show actual injury.

Here, the dog only damaged Carl's shoe. However, in the effort to escape from the dog, Carl climbed a fence, falling and breaking his leg. The shoe is only minor damage, but the broken leg is much more serious.

Therefore, Carl's damages including his damaged shoe and broken leg will be found to be injuries caused by the dog threat.

**Defenses?**

There are none.

Result?

Dell's is liable for Carl's damages.