



California First-Year Law Students' Examination

**Essay Questions
and
Selected Answers**

October 2011

ESSAY QUESTIONS AND SELECTED ANSWERS
OCTOBER 2011 FIRST-YEAR LAW STUDENTS' EXAMINATION

This publication contains the essay questions from the October 2011 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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October 25, 2011



California First-Year Law Students' Examination

Answer all four (4) questions.

Time allotted: 4 hours

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

On June 1, Betty faxed FeedCo a letter, expressing an interest in purchasing pigs. In response, FeedCo faxed Betty an unsigned document entitled "Pig Sales Agreement," which, among other things, provided:

Buyer agrees to purchase from Seller, and Seller agrees to sell to Buyer, approximately 1050 pigs each month during the term of this agreement, at a purchase price of \$33.25 per pig. Buyer shall purchase all of her feed requirements from Seller. The term of the agreement is three years. The agreement will be interpreted in accordance with the law of Washington.

On June 10, Betty signed and returned the document to FeedCo after making the following changes: (1) adding "+/- 20 head" to the phrase regarding the number of pigs to be purchased; (2) adding "for so long as the prices of FeedCo's feed are competitive with other suppliers" to the sentence requiring her to purchase her feed requirements from FeedCo; and (3) changing the choice of law provision from Washington to California.

On June 25, FeedCo presented Betty with a revised document signed by FeedCo. The revised document included Betty's change about competitive prices, and provided a contract commencement date of June 29. It did not include Betty's changes about the number of pigs to be purchased or about the choice of law provision. Betty again made those two changes to the document, initialed her changes, signed it, and returned it to FeedCo.

On June 29, Betty agreed to accept, and actually accepted, delivery of 1050 pigs from FeedCo for \$33.25 per pig.

On July 15, Betty received a further revised document signed by FeedCo. Once again, it did not include her changes about the number of pigs to be purchased or about the choice of law provision. At this point, Betty advised FeedCo that she would not accept any more pigs because they did not have a contract.

Can FeedCo prevail in a breach of contract action against Betty? Discuss.

Answer A to Question 1

Feedco vs. Betty

Feedco will prevail against Betty in a breach of contract action against Betty.

Applicable Law

UCC is applicable to the sales of goods (moveable tangible things). All others are under the ruling of common law.

Predominant factor test or the gravamen injury test are used to determine the predominant applicable law, when the contract is combination of goods and services. Here, the transaction is dealing with 1) purchasing of pigs and feed.

Therefore, the applicable law is UCC.

Merchant

Merchant is someone holds special knowledge in goods of kind in the contract, or someone who frequently dealing with the goods

Here, Feedco is a merchant and Betty is not.

Valid Contract

The requirement for valid contract consists of mutual assent and consideration without defense to formation.

Offer

Under contract law an offer is defined as an outward manifestato of present intent with definite essential terms communicated to the offeree thus creates a power of accepting. Under UCC the essential term is quantity. Court will apply gap fills for unspecified terms.

06/1 Letter an Offer?

Here, Betty faxed co a letter of inquiry. under contract law the letter that does not include all essential terms. Therefore, this is not an offer.

06/11 Feedco's Response

Merchants Firm Offer

A signed writtig by merchant with identified essential terms is irrevocable for the time stated or the minimum period of three months Here, Feedco stated in the agreement, 1050 pigs each month, for term of 3 yrs, with the price of \$33.25. Byer will

purchase feed required, and agreement in respect in accordance with Washington law. Therefore, this is a valid offer.

An Offer for Requirement Contract

Under contract law, a requirement contract allows Buyer to purchase its requirement in good faith and not disproportionate to its needs. Requirement contract does not require separated insidenter. Here, the agreement states that Betty will purchase all feed requirement from Feedco. Therefore, this is an offer for requirement contract on the part of the contract that is dealing with feed.

Acceptant

Under contract law acceptance is unequivocal assent to the offer by the offeree.

Acceptance with Additional and Different Terms Under UCC

Acceptance with additional terms will become a part of the contract as long as it does not

- 1) material alter the term of the contract
- 2) iron clad offer
- 3) objection by the offeror in a reasonable time

Here, the addition terms are the following

- 1) Adding +/- 20 heads to the purchase

Here, the addition pigs does not violate the terms above.

Therefore, this become a part of the contract.

- 2) Price of the Feed Being Competitive

Here, the terms was accepted by Feedco.

Therefore, this become a part of the contract.

- 3) In Accordance to California Law

Here, the different term became a material alteration. The court will rule that different terms base on the previous trade 1) use 2) performance and previous course of dealing. Since, there were not previous course dealing stated in the facts, court will unlikely to allow this material change in the contract.

Therefore, items 1) and 2) not 3) allowed into the integration of the contract.

Consideration

Under contract law is defined as bargain and for exchange for legal detriment.

Here, Betty agreed to buy and Feedco agreed to sell. Where both parties are not legally obligated to do Therefore, this is considerate

Consideratio for Requirmt Contract

Please see discussed under offer.

Valid Contract

Here, a valid contract was formed on June, 10 with terms discused supra.

06/25 Objectin Made by Feedco

Here, the onjectin was made 10 days after Betty's acceptan on June/ 10, which may not be valid in court, In addition a valid contract was formed on June/ 10.

Therefore, this objectin was not valid under contract law.

06/29 Betty's Accepne of Goods /SoF Requmnt Satisfid

Here, Betty accepted the delivy of 1050 pigs further validated an existnce of a contract. Also, Here acceptane satisfied the requmnt for SOF (for goods > 500 that the writg is required.

Defense to Enforcemt

SOF

Please see discussed above

Condition

Under contract law an event must occur prior to absolute performece.

Here, there was no condition stated in the facts for condition prevalent, concomit, or subsequent.

Therefore, this element is preset.

7/15/11

Anticipaty Repudiato (AR)

Under contract law AR is defined as unequal language stating the party is not goigng to perform. The aggrieved party may 1) urging retract 2) file a breach of contract law sue 3) wait for performce of the breaching party.

Here, Betty stated nonperfmcce and Feedco can exercise the above options.

Therefore, Feedco can sue for Breach of action.

Remedy

General damage

Under contract is defined as the expency of the benefit from the contract. Here, Feedco may be entitled for general dmge.

Special damage

Under contract law is defined as the consequential damage flowing from the breach of contract plus incidental damage.

Therefore, Feedco is entitled for special dmge.

Answer B to Question 1

FEEDCO v BETTY

What Law Applies

Contracts for the sale of goods are governed by the Uniform Commercial Code. Goods are moveable, tangible items identifiable at the time of the contract. This contract is for the purchase of pigs and feed. Pigs and feed are moveable tangible items, therefore goods.

The Uniform Commercial Code (UCC) will govern this contract.

Merchants

A merchant is one who regularly deals in or holds himself out to have special skill or knowledge in the goods involved. Here FeedCo (F) has the ability to sell 1050 pigs per month to a buyer as well as the food required to feed those. Because FeedCo regularly deals in pigs and pig food, they are a merchant under the UCC.

Betty is purchasing 1050 pigs per month. It can be inferred from the number of pigs that she is purchasing that Betty has a farm that processes pigs. Therefore, Betty will be considered a merchant under the UCC.

Contract

A contract is a promise or set of promises which the law will enforce and for the breach of which a remedy is available. A contract consists of a mutual assent (valid offer and acceptance) and sufficient consideration.

Offer

On June 1, Betty (B) faxed F a letter which stated that she was interested in purchasing some pigs. An offer, under the UCC requires quantity and identification of parties. Here

the parties are B and F, however, B did not include a quantity, therefore this is not an offer but an invitation to negotiate.

In response to B's fax, F faxed a letter which provided more definite terms. Quantity - 1050 pigs, time of performance - each month for three years, Identity of Parties - B and F, Price - \$33.25 per pig, no price for feed, Subject matter - pigs and feed.

Because the terms were stated with specificity, this will be considered a valid offer by F to B.

Acceptance

Under common law an acceptance is an unequivocal assent to the terms of the offer. Under the UCC an acceptance is a definite and seasonable expression of acceptance even if it contains terms different than or in addition to the terms of the offer.

Here B signed and returned the document on June 10, but made changes to the terms. She changed the quantity to give or take 20 pigs, and added a condition on the terms of the requirements contract (infra) regarding the food. She also changed the state within which any breach claims are to be disputed from Washington to California.

Because B signed and faxed back the offer, she has communicated a definite expression of acceptance.

Therefore, there is a valid acceptance

Consideration

Consideration is that which is bargained for and given in exchange for a return promise.

Here B agreed to pay \$33.25 per pig and a reasonably competitive price for the feed. F agreed to provide B with pigs and feed. Therefore, there is sufficient consideration.

Installment Contract

An installment contract is one wherein delivery is to be made in installments. Here B has agreed to buy and F has agreed to sell pigs and feed delivered monthly for three years. Therefore this is an installment contract.

Requirements Contract

A requirements contract under the UCC provides that the buyer will act in good faith to order that which is required by her. Here B agreed to buy as much feed as required for her pigs from F. Therefore, B is required to act in good faith to order that amount of feed which she requires.

Conditions

A condition is an act or event the happening of which either creates or extinguishes an absolute duty to perform.

Here B inserted a condition precedent to her duty to purchase feed. The condition is that the feed remain priced competitively. Therefore, as long as F keeps their prices at a commercially reasonable competitive price, B's duty to perform (pay) becomes due.

Further, B's duty to pay becomes due after F has delivered the pigs. Therefore, B is not required to pay unless F delivers the pigs.

Additional and Different Terms 2-207

Under the UCC an expression of acceptance is an acceptance even if it contains different or additional terms. The terms will become part of the contract unless they materially alter the contract, the other merchant objects within a reasonable time, or the offeror has expressly limited the contract to the terms in the offer.

Number of Pigs

The offer from F states that the number of pigs delivered each month is to be 1050. In B's acceptance she added a "give or take 20" term to the quantity of the pigs. F did not

object to this added term, however, also did not include it in their confirmation letter received by B on June 25. When Betty initialed her changes, she again added the “give or take” term and returned it to F.

20 pigs either way of 1050 is not a material change. F did not expressly limit the acceptance to the terms of their offer and F did not expressly object to the added terms. Therefore, this term becomes part of the contract and B is entitled to order 1050 pigs give or take 20 each month.

Choice of Law

B also changed the law provision from Washington to California. F did not expressly limit acceptance to the terms of the offer, and did not object to the different term stated (California vs. Washington law). F will argue that the law provision is a material fact and therefore did not become part of the contract, however acceptance was still valid. B will argue that the provision of law was an important factor and that because she added that provision twice to F's documents, she expressly indicated that acceptance was limited to their acceptance of her different and additional terms. However, B did not specifically state that acceptance is dependent on F agreeing to the additional and/or different terms.

When there is a different term within the offer and acceptance, the term will often become part of the contract if the offeror does not expressly object to it. Here, F did not expressly object to it. Therefore, it is possible that the term changed to California. However, some courts apply the "knock out" rule which states that when there are conflicting terms, both terms are stricken from the contract and the court will provide commercially reasonable gap filler.

Therefore, her acceptance was valid and the contract is enforceable.

Duties

On June 29th B accepted delivery of 1050 pigs at \$33.25 per pig. Acceptance under the UCC can also come in the form of acceptance of goods. If the court finds that their written agreements were not sufficient to indicate a mutual assent and meeting of the minds, F's delivery and B's acceptance of the pigs will operate as an acceptance.

Therefore, there is a contract and B's duty to pay has come fully due. Betty accepted and paid for the pigs.

Defenses

Statute of Frauds

Under the statute of frauds, an agreement for the sale of goods \$500 or more must be in writing. This agreement is for the sale of pigs which cost over \$500 therefore, the Statute of Frauds will apply.

Signed Writing

The statute of frauds will be satisfied if there is a writing containing sufficient terms signed by the party to be charged. Here F is claiming breach by B, therefore, for the contract to be valid there must be a signed writing by B. B signed F's "Pig Sales Agreement" and returned it on June 10. The agreement contained price, quantity, parties, subject matter and time of performance; therefore there is a signed writing. Further, On June 25 Betty initialed F's revised document including her changes as to additional and different terms, therefore there is another signed writing.

The statute of frauds defense will not apply.

Anticipatory Repudiation

Anticipatory Repudiation is an unequivocal expression of failure to perform.

B advised F that she would not accept any more pigs because they did not have a contract. This is an unequivocal expression of failure to perform and therefore is an anticipatory breach.

F may treat this as a present breach.

Betty will argue that they did not have a contract because they did not agree about the terms of the offer, specifically, the state within which disputes would be handled and the give or take 20. However, as discussed supra, these did not create fatal flaws to the contract. The parties agreed on quantity 1050 (give or take 20) and price of pigs (33.25 per pig) as well as a commercially reasonable price for feed. Therefore, their possible disagreement about the state will not relieve B's duties under the contract.

F will prevail in a breach of contract action against B.

Remedies

The non breaching party is required to cover his damages. F will be required to apply best efforts to find another buyer for the pigs and feed. B will be required to pay the difference in cost, or F's expectancy under the contract.

Question 2

Al and his wife Bobbie owned a laundromat and lived in an apartment above it. They were having significant financial difficulties because the laundromat had been losing money.

Unbeknownst to Bobbie, Al decided to burn the laundromat down in order to obtain insurance proceeds. He contacted Ted, who had a reputation for being available to do "odd jobs." Ted agreed to set fire to the laundromat the next day for 20 percent of the insurance proceeds. Al told him that he would call him once everyone was out of the building.

The next day, Al invited Bobbie out for a walk. While she was getting ready, he checked the laundromat, found no one there, and called Ted. While Al and Bobbie were out walking, Bobbie mentioned that, just as she was leaving, her brother Brad had come by the apartment unexpectedly and was napping on their couch. Al rushed to call Ted. When he could not reach him, he made an anonymous call to 911 to report a possible fire at the laundromat.

In the meantime, Ted started a fire that quickly engulfed the laundromat and the apartment, and killed Brad. After learning of Brad's death, Al decided not to file a claim for insurance proceeds.

With what crimes, if any, could Al be charged and what defenses, if any, could he assert? Discuss.

Answer A to Question 2

With what crimes, if any, could Al be charged with and what defenses, if any, could he assert?

People vs. Al

Can Al be charged with insurance fraud?

Insurance Fraud is the intentional or purposeful damage of one's own property in order to obtain by deceit and with fraudulent intentions a recovery from one's insurance company. The facts indicated that Al's laundromat business had been losing money. The further state that Al decided to burn down his laundromat with the intentions of collecting "insurance proceeds". The facts do not indicate whether Al successfully recovered any 'insurance proceeds' or not, however, he had the requisite specific intent, or mens rea; he was not privileged to burn his home down purposefully in order to defraud his insurance company; he appeared to be involved in an insurance scam by way of soliciting (infra) Ted to a conspiracy (infra); and he in fact perpetrated the offense beyond mere preparation--that is, he solicited Ted and took an overt step in the furtherance of the plan by initially removing everyone from the target structure; Al will be justly charged with Attempt to Commit Insurance Fraud; The fact that he decided not to file a claim upon learning of Brad's death is irrelevant to an inchoate crime; however, it does evidence that Al never succeeded in committing Insurance Fraud;

Can Al be charged with Solicitation?

Solicitation is the encouragement or antagonization of a crime; The facts indicate that Al, in order to perpetrate his insurance fraud crime, contacted Ted to encourage him to burn his laundromat down in exchange for a percentage of the 'insurance proceeds'. Al will be justly charged with Soliciting Ted.

Merger law; The crime of solicitation will merge with the greater subsequent crime;

Can Al be charged with Conspiracy to Commit Arson?

A Conspiracy is the willful entering into an agreement with another person, with requisite intent on entering that agreement to commit a crime; and modernly an overt act in furtherance of the crime; As mentioned supra, Al contacted Ted to solicit him. He and Ted agreed to and devised a plan to burn down Al's laundromat in order to collect insurance proceeds; Al's step in furtherance of the plan (mentioned supra); Al will be justly charged with Conspiracy to Commit Arson.

Can Al be charged with Conspiracy to Commit Insurance Fraud?

Conspiracy (Supra). Elements of Conspiracy (supra); The facts indicate that Al entered into an agreement with Ted in order to defraud his insurance company. The agreement was intentional and an overt action in furtherance of the conspiracy was made (supra); Al will be charged with Conspiracy to Commit Insurance Fraud. The fact that he decided to abort his claim is irrelevant;

Can Al be charged with Conspiracy to Commit Murder?

Conspiracy (Supra); Elements of (Supra); The facts indicate that Al and Ted agreed to commit modern law arson; It is foreseeable that someone could be seriously injured or killed by the perpetration of such an act; The death of a innocent bystander is foreseeable in the furtherance of the Modern law Arson; Thus, if a court finds that the felony murder of Brad was in furtherance of the crime of modern law arson, Al may be charged with Conspiracy to Commit Murder;

Will Al be liable for the crimes of Ted?

Pinkerton's Rule establishes that all co-conspirators are responsible for the crimes of one another that are foreseeable in the furtherance of the intended and conspired-to crime; The facts indicate that Ted performed the actus reus of the setting fire to the laundromat; While Al was not an Accomplice to the crime because he was not at the crime scene, he will still be vicariously liable for Ted's offenses due to Pinkerton's law.

Was Al an Accessory before the fact?

An accessory before the fact is one who aids in the commission of a crime, however, is not necessarily at the crime scene concurrent with the actus reus. The facts indicate that Al phoned Ted to notify him that the laundromat was void of people. He helped Ted by giving him a cue; As such Al is an accessory before the fact to the crime.

Can Al be charged with Arson?

Arson at Common Law is the intentional burning of a dwelling of another; At Modern Law it is the intentional burning of the structure of another, not necessarily a dwelling; The facts indicate that Al had specific intent to burn down his laundromat. While his laundromat is not a dwelling per se, it is beneath an apartment which is a dwelling. Because of the juxtaposition of the two units, a court will likely find that the laundromat and the apartment are in fact the same structure; If so, Al will be justly charged with Common Law Arson. If the court finds that the laundromat and the overhead apartment were separate structures, Al will be charged with Modern Law Arson.

Can Al be charged with Murder?

Was there a homicide? Homicide is the killing of another person. The facts indicate that Brad was killed. Yes, a homicide occurred.

Murder is the killing of another person with Malice Aforethought.

Did Al (and Ted) have malice?

Malice Aforethought is the intent to kill, intent to cause serious bodily harm, a wanton and willful disregard for human life, or intent to commit an inherently dangerous felony. The facts indicate that Al purposely arranged to burn his laundromat down to collect an insurance payout. Structure fires can prove very deadly and costly, often associated with numerous victims. Such an action is inherently dangerous and a wanton and willful disregard of human life, evidencing of a depraved heart. The court will find that Al (and Ted) did have malice aforethought.

Was Al (by way of Ted) the actual cause of Brad's Death?

The actual cause or cause in fact can be established by the Substantial Factor Test; As mentioned supra, Al is responsible by way of Pinkertons Law for the acts of Ted in furtherance of their conspiracy; If Ted is the actual cause of Brad's death, Al vicariously will be deemed the same; The facts indicate that Ted intentionally set fire to the laundromat; "But For" Ted's setting fire to the laundromat, Brad wouldn't have been killed; Thus Ted is the Cause in fact of Brad's death;

Was Al (by way of Ted) the proximate cause of Brads Death?

The proximate cause is one that in the normal chain of reasonably foreseeable events would lead to the resulting crime; The facts indicate that Ted set fire to the laundromat; Although Al had informed Ted that the apartment was devoid of all life, it was still possible that while Al was away someone might have unbeknownst to him entered either the laundromat or the dwelling; Furthermore, its foreseeable that an inherently dangerous felony of modern law arson can easily and unintentionally cause casualties. Ted will likely be found to be the proximate cause of Brad's death. Thus, causation is affirmed, and Al will be vicariously liable for murder.

Al will be rightfully charged with Murder.

Will Al be charged at modern law with 1st Degree Murder or 2nd Degree Murder?

1st Degree Murder is a Premeditated and Deliberate Killing of Another Human Being With Malice Aforethought, by way of lying in wait, Poison, Torture, or during the commission of an inherently dangerous felony such as Arson. 2nd degree murder are all murders that aren't first degree murders. The facts indicate that Al solicited Ted to set fire to his laundromat as a ploy to make a fraudulent insurance claim; While Al lacked a specific intent to kill Brad with the fire, he never less was in the commission of the inherently dangerous felony of Modern Law Arson vicariously through Ted's actions; As such, A will be justly charged with 1st Degree Felony Murder.

Defenses

Did Al withdraw from the conspiracy? Withdrawal from a conspiracy is modernly evidenced by a repudiation of the planned crime, and an intention attempt to stop or prevent the crime; An important distinction regarding withdrawal is purposeful intent; That is to say, merely withdrawing from the crime because its perpetration has become overwhelmingly difficult is not grounds for a proper withdrawal. The facts indicate that Al made a good faith effort to contact Ted, presumably to warn him about Brad. The facts are not abundantly clear what Al's intentions for contacting Ted were, but is it reasonable to conclude he aimed to warn Ted to abort because of Brad's presence in the overhead dwelling; Since Al never made contact with Ted, this element to withdrawal was never met. The facts also indicate that Al dialed 911 in order to galvanize rescue services to the apartment impliedly to prevent Brad from burning to death. Al never confessed to conspiring to commit insurance fraud, nor did he make mention that Ted was in danger.

If a court finds that Al The facts indicate that Al's actions were a response to the crime being complicated by Brad's presence in the upstairs apartment, and NOT because he aimed to withdraw from the burning of the laundromat below, he may not have met this element properly of withdrawal. If a court finds that Al's attempt to phone 911 was because he had second thoughts about his insurance fraud conspiracy, and finds that his good faith attempt to contact Brad was to repudiate the conspiracy, a court may exonerate him of the crimes perpetrated in furtherance of the conspiracy, however more facts will need to surface at a trial. The facts given are not conclusive enough. As such, Al will most likely not prevail in his defense of withdrawal

NOTE: Al will still be justly charged with the conspiracy whether he withdrew or not. Withdrawal is NOT an affirmative defense to conspiracy.

Can Al submit a Defense to 1st Degree Felony Murder, Modern Law Arson and Conspiracy to Commit Arson, and Conspiracy to Commit Insurance Fraud?

Defenses to Arson, Murder, If a jury decides that Al had withdrawn from the conspiracy, he may have a solid defense to refute Pinkertons rule and the vicarious liability associated with Ted; Al may have a rationale to defense himself against Ted's crimes, but as mentioned supra it's unlikely to prevail from the facts given.

Can Al assert a defense that he was not the proximate cause of Brad's death?

Inadequate Causation. Al may argue that he made a reasonable inspection of the premises and removed his wife from their apartment prior to giving Ted the word to set the laundromat ablaze. Al will argue that such an action made it unreasonably foreseeable that Brad or any other visitor might remain in the dwelling; He will argue that Brad's decision to visit the dwelling is a intervening and superseding event, breaking the chain of causation to his untimely death; If a court of law believes Al, he may be able to escape a felony murder charge for inadequate causation; However, a court is likely to rule that Al's inspection was cursory and ineffective, and his wanton and willful disregard for human life predicated such foreseeable catastrophe and loss of life; Al will unlikely prevail in this defense.

Answer B to Question 2

Al's Crimes

SOLICITATION

Solicitation is the intentional asking of another to commit an unlawful act.

After Al decided he wanted to burn down the laundromat he contacted Ted, who is known for doing "odd jobs", to burn down his laundromat. The facts are clear that Al intentionally asked Ted to do any unlawful act (burning down a laundromat to collect insurance proceeds) and has committed the crime of solicitation.

MERGER

The crime of solicitation will merge with the crime of conspiracy.

As shown below, Al will be shown to have entered into a conspiracy. He will not be charged with solicitation, but conspiracy a stronger crime.

CONSPIRACY

Conspiracy is the intentional agreement between two or more persons to commit an unlawful act. Many modern law jurisdictions require an overt step.

Ted agreed to set fire to the laundromat; thus, Al and Ted formed an agreement with intent to commit the unlawful act of burning down the laundromat. Ted actually committed the arson (overt step) and it will not merge with conspiracy. Al and Ted can be charged with conspiracy plus and crimes in furtherance (foreseeable).

PINKERTON RULE

The Pinkerton rule provides that coconspirators are guilty for the crimes of their coconspirators that are in furtherance of the intended unlawful act.

Al and Ted are coconspirators and Al can be charged with any crimes committed by Ted in furtherance of the conspiracy. As shown below, Al can be charged with the murder.

WITHDRAWAL

To withdraw from a conspiracy one must notify the coconspirators of intent to withdraw before the unlawful act is committed. A reasonable person standard is used to determine if the withdrawal is effective. If withdrawal is effective, the person will still be charged with conspiracy, but not any acts in furtherance.

Here, Al has learned that his conspiracy will endanger his brother in law. He tries to withdraw the plan, but cannot reach his coconspirator. He attempts to save brother in law by calling 911, but the attempt is futile. Since Al was not able to communicate his intent to withdraw before Ted starts the fire he has not successfully withdrawn from the conspiracy.

ARSON

Arson is the malicious burning of the dwelling house of another. Malicious can mean an intent to burn or established by reckless behavior. Burning means that the dwelling must be at least charred or burned, blackened or smoke damage will not suffice. Modernly, dwelling house has been removed and any structure of another will suffice.

Because Ted has started a fire that quickly engulfed the laundromat, it can be shown that Ted acted with the required intent to burn the structure of another.

ATTEMPTED INSURANCE FRAUD

Attempt is the specific intent to commit an unlawful crime, but due to a factual impossibility cannot occur. If the actor takes a substantial step in furtherance of the crime though he may have changed his mind, he will be charged with attempt of that crime.

Insurance fraud is the misrepresentation of fact to collection on an insurance policy.

Al did not file an insurance claim for proceeds of his burned laundromat. However, he had the specific intent to commit the crime and set the plan in motion by entering a conspiracy that led to the burning of the building he intended to collect on. He will argue that he did not file a claim and thus a factual impossibility existed, but the substantial step was taken along with the intent and factual impossibility is not a defense to attempt. Al will be charged with attempted insurance fraud.

HOMICIDE

Homicide is the killing of one human being by another. There must be a causal connection between the killing and the person to be charged.

Here, Brad, Al's brother in law, has died because Ted set fire to Al's laundromat that was below the apartment that Al lived and Brad was visiting/napping. A homicide has occurred and is connected to Ted. As mentioned supra and will be shown below that Al can be charged because the killing occurred in furtherance of the intent to commit insurance fraud.

MURDER

Murder is the killing of a human being with malice aforethought. Malice aforethought can be established by one of four ways: intent to kill, intent to cause serious bodily injury, wanton and willful misconduct and felony murder.

WANTON AND WILLFUL MISCONDUCT

Ted and Al did not have intent to harm anyone. Their plan was to be conducted when no one was home. Therefore, they will not be charged with intent to kill or intent to cause serious injury. However, because the homicide occurred due to the arson conspiracy of the laundromat and apartment that led to the killing, it can be demonstrated that Al and Ted acted with wanton and willful misconduct. The laundromat is a place of business that could have led to killing of customers who were

visiting outside and an apartment could have been visited by a landlord, which shows that Al and Ted acted with a serious high risk of disregard to human life and could be prosecuted for wanton and willful misconduct.

FELONY MURDER

Felony murder is murder that occurs during the commission of an inherently dangerous crime such as arson.

Here, Brad died because of the arson. The defendants will argue that the arson was completed; however, the murder is collateral to the felony and will not avoid prosecution for felony murder.

VICARIOUS LIABILITY AS ACCOMPLICE

As stated supra, because Al is a coconspirator and even though not present at the crime scene he will be treated as an accomplice and charged with the murder of Brad that was in furtherance on the conspiracy.

FIRST DEGREE MURDER

First degree murder is established by intent to kill by premeditation and deliberation or felony murder.

If the prosecution achieves a conviction beyond a reasonable doubt for felony murder, then Al will be charged with first degree murder.

SECOND DEGREE MURDER

Second degree murder is default murder.

If Al is convicted of wanton and willful misconduct that he will be charged with second degree murder.

MITIGATION TO MANSLAUGHTER

Murder can be mitigated to manslaughter if it can be shown that one acted in a heat of passion or had an imperfect defense (a mistake that was unreasonable but in good faith), known as voluntary manslaughter or involuntary manslaughter (misdemeanor-manslaughter or criminal negligence).

Al did not demonstrate anything to lessen his chances of receiving first or second degree murder. See below for further defense arguments by Al.

JUSTIFICATION

Crime Prevention

Al may try to argue that he called 911 and to avoid a crime of murder, but this is not applicable. Crime prevention by citizen involves responding in the to apprehend a felon. He was only trying to provide a rescue by firefighter or paramedic of his brother since he only reported a fire at the laundromat. Al will not succeed in justification and has no other justifications such as self-defense, defense of others or a reasonable good-faith mistake. Al cannot argue insanity, intoxication or youth. Al may try to argue duress since he was having financial difficulties, but duress will not be applicable since he is not trying to substantial save others. Therefore, Al has no further defenses and can be charged with all of the crimes mentioned above.

Question 3

Dana decided to purchase new carpet for her home from Larry. Before signing a contract, Larry carefully evaluated Dana's home, including the subfloor, and concluded that it would take approximately 10 hours over two days to complete the job.

Dana entered into a written contract with Larry providing that she would pay him \$2,500 for the carpeting project, including the removal and disposal of the old carpet, any necessary repairs to the subfloor, and installation of the new carpet.

When Larry ordered Dana's carpet, he discovered that the manufacturer's price had significantly increased. Later, when he began to remove her old carpet, he discovered that the subfloor was in far worse condition than he had expected. He then realized that the job would take at least 15 hours to complete.

As Larry worked, Dana expressed concern that he would not complete the job in time for an important dinner party she had planned for the following night. She pressed him to complete the job as soon as possible. He responded: "I'm going to lose at least \$500 on this job. Your carpet cost me a lot more than expected, and the installation is taking forever. If you really want me to complete this job by tomorrow, you should consider paying what the job is actually worth."

Shocked by what Larry said, Dana feared that he might walk off the job. Believing she had no alternative, she immediately agreed to pay an additional \$500. Larry worked later than usual that afternoon, and he completed the job in time for Dana's dinner party.

Dana is fully satisfied with the job, but has refused to pay Larry more than \$2,500.

Larry has sued Dana for breach of contract.

What arguments can Larry reasonably make to show that Dana has breached the contract, what arguments can Dana reasonably make to show that she has not, and who is likely to prevail? Discuss.

Answer A to Question 3

Larry v Dana, Dana v Larry

Common law. The UCC governs the law pertaining to the sale of goods. All other contracts are governed by the common law such as personal services contracts. Where there is a mix of a services contract and sale of goods, whatever predominates will be effectual.

Here, Dana is both purchasing the carpet from Larry and he is also providing the service of installing it. It is not evident which one prevails since we do not know the dollar value of the installation vs. the supply of the carpet. For instance if the carpet cost \$2000 and the install was \$500 then we could consider this a UCC contract and vice-versa. Therefore, we can look at it from both points of view, that is the UCC and the Common Law.

Merchants. A merchant is a party who deals regularly with goods in question or holds himself out to have particular skill regarding the good. Here, Larry is both dealing with carpets and also installing carpets and is thus considered a merchant. Dana on the other hand is homeowner and is not a merchant.

Contract. A contract is defined as an agreement for which the law recognizes a breach and provides a remedy in the event of a breach. There must be valid offer, acceptance and legal consideration and no defenses.

Here, the facts tell us that they signed an agreement and therefore we can assume that there is a contract.

UCC. Under the UCC only a quantity term was needed. Therefore, if we are so assume that this is a UCC contract, the quantity of the one carpet.

Common law. Under the common law there is a requirement of definite terms.

quantity - 1 carpet

price - \$2,500

identity of the parties - Larry and Dana

Time of performance - ?

Subject matter - carpet for home

Here we see that there is no time of performance. However, the courts can imply a reasonable term and this would not necessarily preclude that there is a contract.

Therefore, in addition to there being a signed contract and with the necessary terms for both UCC and Common law it is evident that there is a binding contract.

UCC. Modification of contract. Under UCC2-209 a contract can be modified for the sale of goods even when there is no valid consideration as there is an implied condition of good faith and fair dealing.

Therefore, Larry will argue under the UCC that he has made valid change to the contract. He will argue that Dana agreed to the change in the contract by saying agreed to pay the extra \$500.

Common law. Under the Common law, pre-existing duty rule (Alaskan Fish Packer case) there can be no change to a contract unless there valuable consideration. A valid exception to this would be a good faith dispute.

Dana will argue that under the common law, there was no change in what she was to receive. She still received the carpet installed as per the contract. Larry on the other hand will show that there was a change for the undiscovered floor condition. It is noted that where a contractor finds previously undiscovered conditions he may attempt to get consideration for dealing with the problem. Dana, on the other hand, will argue that

Larry carefully evaluated her home including the subfloor and included in his price any necessary repairs to the subfloor.

Further, Larry will attempt to introduce evidence that there was no time is of the essence clause of the contract. Under the common law there is a reasonable time given to the performance of a contract and a party can still be found to have substantially performed even if he goes beyond the time unless there is a time is of the essence clause (unless there is an implied material condition that time is of the essence when the party enters knowing that the benefit is based on the performance being completed at a certain time and here there is no evidence that Larry knows at contract formation anything about the dinner party and that the contract needed to be complete in time for it).

Here, Larry will attempt to prove that somehow the consideration he gave was to finish the job faster as Dana now made time as being of the essence because she wanted the carpet installed. Dana will counter that although she made pressed him to finish in time for the dinner party she did not specifically change the contract to being time is of the essence.

Statute of Frauds. Under the UCC contract of \$500 or more must be signed and be in writing to be valid. Further, modifications must be in writing where they exceed \$500.

Here, the modification was in writing and therefore, Dana will argue that agreed orally to the modification and since it was not in writing it is not enforceable.

Under the common law, as a services contract, the modification need not be in writing.
Defenses.

Defense of Larry. Financial impracticability. Where there was an unforeseen circumstance between contract formation and performance of the duty which would make the contract so burdensome so as to be financially impracticable the courts may

discharge the contract. However, the courts will rarely grant where there is a great added expense due to market conditions.

Nevertheless, Larry could argue that the manufacturer's price significantly increased between formation of the contract and his performance. Dana on the other hand will argue that this is a risk of doing business and she will likely prevail since as mentioned the courts have rarely discharged a contract for added expense.

Further, since Larry has already performed and is seeking a remedy, discharge is just not in his interest and so he would not pursue this remedy at law.

Defense of Dana. Duress. Duress may be either personal or economic. Where personal there is some threat to the defendant or her family. Economic duress will only prevail where the defendant shows they were 1. under a pressing need 2. the plaintiff aggravated the situation.

Here, this defense seems unlikely as there is no evidence that Larry actually created the situation although Dana will argue that she really needed to have it done by the dinner party as it was important and that he took advantage of that situation. Again, this is a question for the trier of facts to decide on.

Unconscionability. Where the term is so oppressive as to shock the conscious. This may be procedural (legalize ect.) or substantial (an oppressive term).

Dana will argue she was shocked by what Larry said and therefore, it is unconscionable.

Breach. Common Law. Where there is substantial compliance there cannot be a major breach of contract. Since Larry completed the contract he will have a claim to the contract price plus any incidentals.

Remedies.

Expectation damages. This puts the parties in the position of the contract being completed.

Dana will argue that the original contract price was \$2,500 and she got what she bargained for with no additions and so does not have to pay an additional \$500.

Larry will argue that the modification was valid and therefore, he is entitled to the extra \$500.

Answer B to Question 3

I. What law governs the contract?

The Uniform Commercial Code (UCC) governs all contracts pertaining to goods which are movable tangible items at the time for identification to the contract. All other contracts are governed by the common law. Here, there is a contract for services regarding the installation of carpet into "Dana's home." Therefore the common law will apply.

Predominate Factor Test- The predominate factor test is used by courts to distinguish whether a contract is goods or services based. Here, "Dana decided to purchase new carpet for her home from Larry. Carpeting is a good since it is movable and tangible. However, Larry was to "carefully" evaluate and inspect "Dana's home" and he was to install the contract. Therefore this is most likely a services based contract because although Dana is purchasing carpet from Larry she has also agreed to pay him "\$2,500 for the carpeting project" which does include the services of inspection, installation, "removal" of her old carpet accompanied with "any necessary repairs to the subfloor." Therefore this is predominately a services based contract since Larry is "carefully" evaluating "Dana's home" which seems to bear a greater burden upon him than simply selling her a carpet. The common law will apply and this is a services based contract.

II. Is there a valid contract?

A contract is a promise or set of promises for breach of which the law provides a remedy or in some way recognizes a duty to perform. A valid contract must have an offer, acceptance, and consideration with no defenses to formation.

Offer- A valid offer must have a present intent to contract with terms being certain and definite communicated to an offeree. This creates the power of acceptance. Here, the evidence indicates that Larry and Dana "entered into a written contract" therefore it is

presumed that there was a present intent to contract because the two parties "entered into a written contract." The terms are certain and definite because the cost of the "carpeting project" is "\$2,500" which includes "installation of the new carpet," inspection of the old carpet accompanied with its "removal" and for him to make "any necessary repairs to the subfloor." This contract was communicated to an offeree based upon the evidence of the fact that there was a "written contract" executed between the parties.

Acceptance

A valid acceptance must have an unequivocal manifestation of assent to the terms of the offer in a manner requested by it or done in a reasonable manner under the circumstances. Here, the evidence indicates that the parties entered into a "written contract" therefore there was a valid acceptance.

Consideration

Consideration is the bargained[-]for exchange of legal benefits and detriments between the parties involved. Here, Larry suffers the detriment of having to install the contract and perform the myriad of services delineated supra while gaining the economical benefit of "\$2,500" payment for providing the carpet and services. Dana suffers the detriment of having to part ways with "\$2,500" while gaining the benefit the new carpet and services. Valid consideration was consummated between the parties.

Pre-Existing Duty Rule- The pre-existing duty rule is applicable where a contractual party is already legally obligated and contractually bound to perform the duties of the contract. Here, after Larry discovered that the contract was going to take "at least 15 hours to complete" instead of "10 hours" as originally estimated by him, Larry demanded an additional "\$500" from Dana to complete the services he was already contractually bound to complete. Due to the pre-existing duty rule Dana will probably not be obligated to pay this amount of money because Larry was already contractually bound to perform the services and he garnished no new consideration to Dana in spite

of her agreeing to pay it. However, Larry will argue that he did furnish requisite new consideration because his original duties upon the job were varied by his request for "\$500" from Dana, because she "expressed concern that he would not complete the job in time for an important dinner party she had planned for the following night," she "pressed him to complete the job as soon as possible" and he "worked later than usual that afternoon" in order to complete it. Larry will claim that when he performed this and the job was done "in time for Dana's dinner party" that this furnished new consideration. However, his argument may fail as he might have already been under a duty to complete the job before her party.

III. Are there any defenses to formation?

Statute of Frauds (SOF)

The SOF mandates that certain contracts be evidenced in writing whereby the parties are identified signed by the party to be charged with essential terms. The SOF mandates that contracts which cannot be performed within a year must be in writing. Here, this contract is for services which are to be completed relatively quickly for Dana's "party." Therefore it can be completed in a year and this contract is enforceable regardless of the fact that it is in writing. Neither party will be able to assert it as a defense as there was a "written contract" consummated between the parties, thus the parties were identified and presumably signed by both. The terms were certain because it involved the sale of a carpet from Larry to Dana, its installation by Larry, the removal of the old carpet by Larry and was also to repair the "subfloor." Neither party can assert this defense and Larry can enforce the contract against Dana because she has "refused to pay" him.

Duress

Contractual duress is when a contracting party knows that the other party has no reasonable alternatives to fulfill the contract performance and in consideration of this

knowledge the party inflicting duress upon the other takes advantage of this position to their economical benefit. Here, Dana will claim that Larry used contractual duress upon her to get her to agree to the additional "\$500" payment because he knew that she needed the job done before her "party" was to begin. Larry will argue that the contract modification was done in good faith as his duties were varied by as discussed supra. This may be an affirmative defense for Dana.

IV. Are there any performance issues?

Impossibility

Impossibility of performance is when an unforeseen event in which its non-occurrence was a basic assumption of the contract that renders performance objectively impossible, meaning that no one would be able to perform it. Here, Larry will assert impossibility of performance because he "discovered that the manufacturer's price had significantly increased" and that he "discovered that the subfloor was in far worse condition than he had expected." This defense will fail because part of the contract was for Larry to "carefully" evaluate the subfloor, and the fact that the "subfloor" was in worse condition than he expected would fall under part of the inherent risk that he assumed when he entered the contract. Further, mere increase in cost to a contractor is also within the purview of a risk which he assumed when he entered the contract. This defense will fail.

Impracticability

A contracting party's performance is excused when he endures severe hardship from an unforeseeable event which renders performance highly commercially impracticable. For the same reasons as asserted above, Larry will claim that the increase in costs and the worse condition of Dana's "subfloor" rendered the performance of the contract commercially impracticable. However, this defense will fail as he most likely assumed the risks of these burdens.

Frustration

Frustration of purpose is when an unforeseeable, supervening event renders performance of the contract pointless. Here, Larry will argue that when the cost of the carpet increased along with Dana's "subfloor" being in a worse condition that this frustrated the purpose of his contract to be pointless because he stood "to lose at least \$500 on the job" for her. However, this defense will fail because these events were not unforeseeable and he most likely assumed the risk of them occurring when he entered into the contract with Dana.

Substantial Performance

Substantial performance is when a contracting party fully performs but for a minor defect. Here, the evidence indicates that Larry completed performance in order for Dana to have her party. He was also not paid. Therefore Larry has substantially performed.

Modification

A contract modification is when multiple parties agree to vary the performance of duties between both parties under a contract which has already been consummated. Services based contracts which are governed by the common law, such as here, require additional consideration for a contract modification. Larry will argue that after he learned of the difficulties of the price increase of the carpet and learned the true deleterious condition of Dana's "subfloor" that he consummated a valid contract modification with her as his duties were varied as discussed supra.

V. Is there a breach?

Material Breach

A material breach occurs when a contracting party fails to receive the substantial benefit which she bargained for. Here, Larry will claim there was a substantial breach because he was not paid and did not receive the substantial benefit which he bargained for.

VI. Are there any damages and remedies?

Restitution/ Quasi Contract

Restitution in quasi contract seeks to avoid the unjust enrichment of the defendant from the benefit which was conferred upon her by the plaintiff. Here, Larry will recover the reasonable value of the services which he performed for Dana.

Expectation Damages

Expectation damages seek to place

Question 4

One evening, a singer was performing at a local restaurant that was packed with 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!" 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.

Answer A to Question 4

Polly v. Singer

Since there would be no basis for any intentional torts, Polly would need to sue Singer based on Negligence.

Negligence: Polly must show that Singer owed her a duty, he breached that duty and caused her damages.

Duty: When one acts affirmatively, he owes a duty to anyone foreseeably injured by his actions. Here, Singer, upon seeing smoke, screamed "Fire". This was an affirmative action and since Polly was near the stage and could be foreseeably injured, he owed her a duty of reasonable care.

Breach. To prove breach, it needs to be shown that Singer acted unreasonably. A good measurement of unreasonableness is the Learned Hand test. This will weigh the magnitude and likelihood of the potential harm against the burden of avoidance plus the social utility. Here, by screaming the word fire in a packed restaurant it can be said that he acted unreasonably. The word caused panic and rushing of the customers. The potential harm of this could be that people get pushed or stomped or worse and in a packed restaurant that could be said to be quite likely. To avoid this, and since the smoke was the only thing in the dining area, the singer could easily have instead advised people calmly to exit the restaurant and could have avoided the panic. Therefore, Singer acted unreasonably.

Causation. Polly must also prove that Singer was both the cause in fact and the proximate cause of her injuries.

Cause-in-fact. Something is the cause in fact when "but-for" that conduct the injury would not have occurred or that the conduct was a substantial factor. Here, Polly

was a blind woman who walked into the kitchen. It cannot be said that but for Singer yelling "fire" that she would have not walked in the kitchen and been injured in the fire. The only argument would be that his causing of the panic was a substantial factor to her injuries in that she may have been able to find the front door had the panic not occurred. But this would be difficult to prove.

Proximate cause: If Singer was found to be the cause-in-fact, then he also be the proximate cause since there were no superseding and intervening events.

Damages. If Singer was found to be the cause, he would be liable for all the injuries she suffered as a result including the smoke inhalation and burns.

Defenses

Contributory Negligence. Singer would argue that Polly was contributorily negligent. Contributory negligence will be a complete bar to recovery. Singer would argue that both the fact that Polly was without someone to help her see and the fact that she mistakenly walked into the kitchen were negligent. Polly's negligence would be measured based on a reasonable blind person, that has been blind as long as Polly, and under these circumstances. If her actions were negligent, Polly would be barred from recovery even if Singer was negligent.

Comparative Fault. In some jurisdictions, Polly's negligence would simply lower the amount she is able to recover. In a pure comparative fault jurisdiction, she would be limited to the exact percentage she is not at fault. In a modified comparative fault jurisdiction, there would be a complete bar if her negligence was greater than a set percentage.

Therefore, Singer would most likely be able to prevail both because his actions would not be considered the cause in fact and even if there were, he could reasonably raise the contributory negligence defense and prevail.

Polly v. Restaurant

Vicarious Liability. If Singer is found to be negligent and Singer is an employee of restaurant, then Restaurant could be found vicariously liable under Respondeat Superior for Singer's negligence. Here it is unclear if Singer is an employee or if he was subcontracted for this show. If he is a subcontractor, Restaurant would not be liable for his negligence.

Negligence: Even if there is no vicarious liability, Polly would have a direct cause of action against Restaurant for negligence.

Duty. Here, Polly would use negligence per se to establish a duty for Restaurant. The violation of a statute will set the duty and standard of care in a negligence case when the statute was designed to prevent the type of harm that has occurred, the plaintiff is in the class of plaintiffs being protected, and the violation is not excused. Here, the statute states that the restaurant must equip ovens with ventilation systems and maintain the systems in working order at all times. This statute is clearly meant to protect against the harm of smoke by requiring the system and against fire by requiring them to be maintained in working order. Any employee and restaurant goer would be in the protected class, and therefore Polly is in the protected class. And since the violation is not excused, the statute will set the standard of care.

Breach. Under negligence per se, violation of the statute will constitute breach. Here, the ventilation system had grease built up in the pipe which blocked airflow. Clearly, they are in violation of the statute since the system is not in working order. Therefore, they breached their duty.

Causation. It must also be shown that the breach of the duty was the cause of the injuries.

Cause-in-fact. The facts state that the fire originated in one of the ovens because the ventilation system had grease buildup which blocked the airflow. Had the system been properly maintained, the fire would not have happened, and Polly would not have been injured.

Proximate Cause. Restaurant will argue that Passerby flipping her over was an intervening cause that would relieve them of liability. However, since it was restaurants negligence that brought about the need for passerby to attempt to rescue Polly, this would be a foreseeable result of the fire and would not cut off liability. Therefore, Restaurant is both the cause-in-fact and the proximate cause of Polly's injuries.

Damages. Restaurant would be liable for damages that resulted from the fire. This would include the worsened injury caused by Passerby since negligence invites rescue and it was foreseeable that this would occur.

Defenses. Restaurant would also raise the defenses of contributory negligence and comparative fault. It is unlikely that they will prevail since it can be easily argued that Polly acted as reasonable blind person since all blind folks do not bring people with them everywhere and she was acting in an emergency situation.

Therefore, it is likely that Polly will prevail in a negligence suit against Restaurant.

Polly v. Passerby

Negligence. Polly may also attempt to sue Passerby for her worsened injuries.

Duty. Here, although Passerby had no duty to come to the rescue of Polly, but by undertaking to rescue her and leaving her in a worse off position, he did owe a duty of reasonable care.

Good Samaritan Laws: If this jurisdiction has a good Samaritan law, it would immediately relieve Passerby of any liability.

Breach. Even though he did have a duty, it needs to be established that Passerby acted unreasonable. Here, all he did was flip Polly over to assure that she was breathing. He was also acting in an emergency situation. It would need to be shown that a reasonable person under the same emergency situation would have acted differently and not flipped her over to inspect. Polly was face-down on a sidewalk and Passerby was going to administer CPR, these actions were quite reasonable under the situation. Therefore, it is unlikely that Passerby had breached his duty.

Causation. If it is found that he did breach his duty, then he would also be the cause since the actions of him flipping her were the but-for cause of her worsened injuries and there were no intervening events.

Damages. If found liable for some reason, he would only be liable to the extent of the extra harm caused by flipping Polly over.

In this case, it is likely that Passerby would prevail a suit for negligence since he did not breach his duty of reasonableness.

Battery. Polly could also attempt to bring a claim of battery against Passerby. Battery is a intentional and voluntary conduct that causes a harmful or offensive touching to the plaintiff. Here, clearly Passerby did intentionally touch Polly. The action did harm Polly since it worsened her injuries. However, this was the kind of touching that would normally not have harmed anyone at all. The thin-skull doctrine, which states you take the plaintiff as you find her would not apply since that requires some type of harm to be likely. Here, a normal person would not have been harmed at all, so the extent of injury being worse is invalid. In addition, there can be implied consent because he was coming to her aid. Therefore, it is unlikely that Polly could prevail under Battery.

Answer B to Question 4

I. Polly v. Singer. Polly will bring an action in negligence against Singer. A negligence claim requires that five elements be met - (1) Duty; (2) Breach of Duty; (3) Actual Cause; (4) Proximate Cause; and (5) Damages.

A. Duty. When a defendant affirmatively acts, he owes a duty of reasonable care to any foreseeable plaintiffs. Here, Singer yelled "Fire." This was an affirmative act, and since Polly was in the restaurant, she was a foreseeable plaintiff. Singer owes a duty of reasonable care to Polly.

B. Breach of Duty. A breach of duty can be found to exist by employing the Learned Hand Calculus (LHC). The LHC ($B < PL$) states that if the probability of harm multiplied by the magnitude of the harm, outweighs the burden to make the act safer or the social value/utility of the act, then the defendant will have breached his duty of care. Here, it's going to be very difficult to find that Singer breached his duty of care to Polly. Singer saw a fire and reacted the way that most people would have reacted. He was afraid of burning to death, and he did not want to die or anyone else for that matter. However, if the court feels that he was negligent by yelling fire, which causes most people to panic (probability) and that this would cause most people to abandon the restaurant, preventing Polly from receiving help (magnitude), and that he should have pulled a fire alarm or notified the manager or called 911, then Singer will be found to have breached his duty of care to Polly.

C. Actual Cause. Actual cause exists if the defendant's acts are the but-for cause of the plaintiff's injury. Here, but for Singer yelling "Fire," the restaurant patrons would not have become scared and would not have rushed toward the exits.

D. Proximate Cause. Proximate cause exists if the plaintiff's injuries are a foreseeable consequence of the negligent act, and there are no intervening, superseding events that take place between the negligent act and the harm suffered by

the plaintiff. Here, this will be another analysis that a court could use to determine that Singer was not liable for Polly's injuries. Even if Singer was negligent in yelling "Fire," Polly's injuries may be seen as unforeseeable, due to the fact that a blind person shouldn't be going to a crowded restaurant (presumably by herself) where things like this could happen. However, it is foreseeable that a person who can't see may end up walking into the wrong location and may suffer injuries as a result. If the court finds that the negligent act (yelling "Fire") is foreseeable capable of causing someone to get burned and suffer smoke inhalation, then this element may be satisfied. And because danger/negligence invites rescue, Polly could recover for the injuries she suffered from passerby as well, as long as it was foreseeable, which Good Samaritan assistance would be.

E. Damages. Damages are easy to satisfy. Polly suffered injuries - burns, smoke inhalation and the worsening of her injuries from Polly.

F. Defenses. Singer will try and claim that Polly was contributorily negligent or comparatively negligent. Most jurisdictions have eradicated contributory negligence as a means of mitigating the defendant's responsibility. Contributory negligence would be a complete bar to the plaintiff's recovery.

1. Comparative Negligence. Comparative negligence exists when the plaintiff does conduct him or herself in a way that protects her from harm, and this negligence legally contributed to bring about the plaintiff's harm. Therefore, Singer will claim that Polly was comparatively negligent by coming into the restaurant as a blind person, in the first place, and that she was negligent by walking into the kitchen, which will be harder to satisfy by the fact that she was blind. Comparative negligence allows for the plaintiff's recovery to be reduced by a certain percentage, based on the percentage of harm that the plaintiff contributed. In a pure comparative fault jurisdiction, even if Polly was 99% at fault she could still recover for 1% of her injuries. In a modified comparative negligence jurisdiction, if Polly's harm was below 49%, she could recover.

Other jurisdictions would also allow Polly to recover for her damages as long as her fault didn't surpass 50%.

Conclusion

Due to the fact that yelling fire is not a negligent act when you have a reasonable fear for your own safety, Singer was not negligent because he didn't breach his duty of care to Polly. Polly will not recover damages from Singer.

II. Polly v. Restaurant. (See negligence above)

A. Duty. (see above). Here, because Polly was an invitee and Restaurant was the landowner/occupier, Restaurant owed Polly a duty of reasonable care to inspect, discover and remedy any defects (dangerous conditions) that existed on its property. Restaurant held the restaurant open and probably charged Polly an admission fee to hear Singer perform, therefore Polly would be a business invitee. Restaurant acted affirmatively and Polly was a foreseeable plaintiff, since she was a customer of the restaurant.

B. Breach of Duty. (see above). Here, Restaurant breached its duty of care to Polly. By employing the Learned Hand Calculus, the probability of a blind person being injured in a fire, magnified by the fact that fire and smoke inhalation are very dangerous, because they can lead to serious injury or death, and the fact that the burden to make the kitchen safer for its invitees, by not properly inspected the kitchen's ventilation system, which is not burdensome, Restaurant has breached its duty of care to Polly.

1. Negligence per se. Negligence per se exists when the defendant violates a statute, ordinance or regulation that was used as the duty of care. Three things must be proven:

a. The plaintiff was in the class that the statute was designed to protect. Here, Polly was a customer of the restaurant. She was definitely the type of

plaintiff the statute was designed to protect, especially since she got injured on Restaurant's premises.

b. The type of injury suffered by the plaintiff is the type of injury that the statute was designed to protect against. Here, Polly suffered smoke inhalation and burns to her skin. Since proper maintenance of a ventilation system for the oven would have probably prevented this injury, and fire resulted due to Restaurant's negligence in not maintaining the safety of the oven, Polly suffered the kind of injuries that the statute was designed to prevent against.

c. Excuse. There are no facts available that show that Restaurant was or should have been excused to not properly maintain their oven's ventilation system. A court will find that under negligence per se, Restaurant breached their duty of care to Polly.

C. Actual Cause (see above). Here, but for Restaurant's failure to properly maintain the ventilation system and do inspect, discover and remedy dangerous conditions on their property, Polly would not have suffered harm.

D. Proximate Cause. (see above). Here, Restaurant may try and claim that Polly's blindness and Singer's yelling "Fire" were intervening, superseding forces that should break the chain of causation/events for Restaurant's negligence. There are several people that are blind, and they do go to restaurants, and yelling "Fire," is a very common and foreseeable consequence of witness smoke and fire in a crowded place. Danger invites rescue, and Passerby's actions would most likely be seen as foreseeable as well. Therefore, Restaurant will be the proximate cause of Polly's injuries.

E. Damages. Polly suffered smoke inhalation and burn damage. She has suffered harm.

F. Defenses. (contributory and comparative negligence - see above). As previously discussed in proximate cause for Polly v. Restaurant, Restaurant cannot claim her blindness, Singer's yelling of "Fire," or Passerby's actions as unforeseeable, therefore these defenses will not alleviate or discard the negligence of Restaurant.

Conclusion.

Restaurant will be liable for Polly's injuries.

III. Polly v. Passerby. (see negligence definition and elements above).

A. Duty. (see above). No one owes another a duty of care to rescue someone, like Polly, absent a special relationship, creation of peril or an undertaking. However, Passerby did commit to an undertaking, therefore he may have started out as not owing a duty of care to Polly, once he committed to an undertaking (to perform CPR), he now created a duty of reasonable care, and since Polly was in the zone of danger (proximity to him and the burning restaurant), Polly is a foreseeable plaintiff.

B. Breach of Duty. (see definition above). Here, the probability and magnitude of harm probably would be outweighed by the social utility and value of passerby's conduct (attempting to perform CPR). Because danger invites rescue, Passerby acted reasonably by trying to help a blind person breathe and prevent her death. Therefore, he will most likely not be found to have breached his duty. However, if the court feels that he acted unreasonably by trying to perform CPR, and this worsened her previous injuries, then Passerby may be found to have breached his duty.

1. Emergency Doctrine. Also, Passerby's actions will also be viewed through the scope of what a reasonable person under the circumstances that Passerby found himself in. This could help to prove that Passerby acted reasonably.

C. Actual Cause. (see above). Here, but for attempting to perform CPR and turning her over, Polly would not have suffered additional harm. Therefore, Passerby is the but for cause of her injuries.

D. Proximate Cause. (see above). Here, the fire that broke out which caused her original injuries, which intervened between his act and Polly's injuries are not unforeseeable. Restaurants sometimes catch fire. People yell "Fire" when fires break out, therefore, Passerby cannot use Singer's actions to cut off foreseeability, and it's probable that a Restaurant may not perform its landowner duties properly, therefore, Passerby may be held liable for worsening Polly's injuries.

E. Damages. Polly suffered damages when they were worsened by Passerby's activities.

F. Defenses. The best defense for Passerby would be the Good Samaritan Doctrine (GSD). If the jurisdiction where the fire and resulting injuries took place has a GSD on the books, as long as Passerby was not reckless or wanton in his response to assist Polly, then he will be relieved from liability for Polly's injuries.

2. Contributory/Comparative Negligence (see above). Passerby could claim the same defenses that were used by the other defendants in Polly's previous lawsuits against Singer and Restaurant.

Conclusion. Passerby, because he was not reckless or wanton in coming to Polly's aid or in the manner in which he attempted to assist her, he will not owe Polly any damages for negligence.