



California First-Year Law Students' Examination

**Essay Questions
and
Selected Answers**

October 2013



The State Bar Of California
Committee of Bar Examiners/Office of Admissions

180 Howard Street • San Francisco, CA 94105-1639 • (415) 538-2300
845 S. Figueroa Street • Los Angeles, CA 90017-2515 • (213) 765-1500

ESSAY QUESTIONS AND SELECTED ANSWERS

OCTOBER 2013 FIRST-YEAR LAW STUDENTS' EXAMINATION

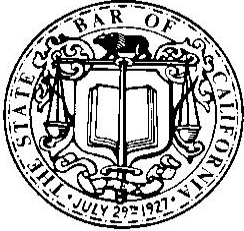
This publication contains the four essay questions from the October 2013 California First-Year Law Students' Examination and two selected answers for each question.

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

<u>Question Number</u>	<u>Subject</u>
1.	Contracts
2.	Criminal Law
3.	Contracts
4.	Torts

October 2013

ESSAY QUESTIONS



California First-Year Law Students' Examination

Answer all 4 questions.

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 that are not pertinent to the solution of the problem.

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

QUESTION 1

Olivia is a florist who specializes in roses. She has a five-year written contract with Juan to sell him as many roses as he needs for his wedding chapel. Over the past three years, Olivia sold Juan between 300 and 1,500 dozen roses annually. Although two years remain on the contract, Juan has just notified Olivia that he cannot continue to buy roses from her because of serious budget concerns.

Last month, Ann emailed Olivia an order for “1,000 white stems” to decorate an event hall, specifying no particular price or flower. Ann assumed that Olivia would send roses, her specialty, but Olivia instead sent orchids, the only “white stems” available at the time. When Ann received the white orchids, she was surprised, but had no time to inquire about substitutes. As a result, she used the orchids for the event. When Olivia subsequently billed Ann \$5 per stem for the orchids, a price twice that of roses, Ann refused to pay the higher amount.

1. What contract rights and remedies, if any, does Olivia have against Juan? Discuss.
2. What contract rights and remedies, if any, does Olivia have against Ann? Discuss.

QUESTION 1 – SELECTED ANSWER A

Olivia vs. Juan

Governing Law

UCC governs contracts involving the sale of goods. Goods are movable tangible objects at the time of contract formation. In this case, the item involved was the sale of roses. Roses are movable tangible objects.

Thus the UCC governs this contract.

Merchants

A merchant is one who has special knowledge or skill of the goods involved in the contract or regularly deals with the goods of this kind.

Olivia is a florist who specializes in roses. This shows she regularly deals with the sale of roses, the goods involved in the contract. Thus, Olivia will constitute a merchant.

Juan and Olivia entered into a five year contract to sell him as many roses as he needs for his wedding chapel. Since Juan wants the contract for five years, and a wedding chapel typically purchases roses for funerals, weddings, or mass schedules, Juan will be considered a merchant.

Hence, both parties are merchants.

Mutual Assent

Mutual assent consists of an offer and an acceptance.

Olivia and Juan entered into a five year contract to sell him as many roses as he needs for his wedding chapel. The facts do not state which party presented the offer or the acceptance, but it is clear that the parties came to a mutual agreement for Olivia to sell Juan about 300 to 1500 dozen roses annually for the next five years and, as such, Juan will pay the price for those deliveries.

Thus there is mutual assent to show there was an intent to enter into a contract.

Consideration

Consideration is bargain for exchange between the parties in which one party incurs a legal detriment and the other a legal benefit.

Olivia incurred the detriment of delivering the specified flowers to Juan annually. She incurred the benefit of receiving payment for the roses that were delivered.

Juan incurred the detriment of paying Olivia for the flowers and Juan incurred the benefit of receiving the specified flowers from Olivia.

Juan will argue that since the exact quantity is not specified in the contract that it is simply illusory and cannot illustrate that there was consideration to bind both parties.

However, under a requirements contract, as illustrated below, the requirements contracts are not illusory so long as the goods delivered are capable of being made, regardless if the exact quantity is not stated.

Thus there is valid consideration.

Requirements Contract

A requirements contract is where the buyer promises to buy from the seller all the goods the buyer requires and the seller in turn promises to deliver all that the buyer requires.

Olivia and Juan entered into a five year contract to sell "as many roses as he needs for his wedding chapel." Olivia promises to deliver all that Juan requires and Juan promises to purchase all that he requires from Olivia. Although the exact quantity is not stated, the contract will still be enforceable since it is capable of being made since the agreement was made in good faith.

Hence, this is an enforceable requirements contract.

Statute of Frauds

Where certain contracts must be evidenced in writing in order to be enforceable and signed by the parties to be bound.

The contract entered into by Juan and Olivia was for the sale of roses, which is a good. Since Olivia delivered approximately 300 to 1500 dozen roses annually it established that the goods exceed the price of \$500. This must be evidenced in writing as it was.

Also, since the contract was for five years, it cannot be performed in one year and must be evidenced in a writing, which it was when they entered into a written contract.

Hence, Statute of Frauds applies and is satisfied.

Constructive Condition Precedent

Where an act must offer before another party's performance becomes due.

Here, Olivia must deliver the roses to Juan before Juan has the duty to pay for the roses that were delivered.

Hence a condition precedent exists.

Impossibility

Where a party's performance becomes objectively impossible due to an unforeseen circumstance that occurs.

Juan will attempt to argue that his duty for the remaining two years should be discharged since he incurred serious budget concerns that affected his ability to perform.

Olivia will counter-argue that it is commonly foreseeable with those buying and selling flowers that budget concerns may arise and that issues with payment are possible, but that since it was reasonably foreseeable it should not cut off Juan's liability and duty under the contract. Olivia will also state that it was not objectively impossible for Juan to perform since he simply incurred some budget cuts and could still find a way to make payment.

Therefore, no valid impossibility defense.

Impracticability

Where a party's performance becomes impracticable due to an unforeseen event that neither party could foresee.

Juan will argue that his performance has become impracticable because of changes in his economic situation. He will attempt to argue that it was not foreseeable that he

would incur such budget cuts since he had no problem the previous three years of the contract.

However Olivia will argue that increases in prices or budget changes are reasonably foreseeable and that although it might be more difficult for Juan to make payments he is still obligated to perform because his economic impracticability was anticipated.

Thus no valid impracticability defense.

Frustration of Purpose

Where a party's purpose for entering into a contract has become frustrated due to an unforeseen event that was not anticipated by either party and both parties have knowledge of the other's purpose.

Juan will state that he only wanted to enter into an agreement with Olivia so long as he could afford the shipment of roses and now that he is incurring budget concerns his purpose for entering the contract was frustrated. Juan will argue that he was not aware that he would incur such difficulty because he had been able to perform the past three years and could not foresee that it would affect the contract the remaining two years.

Olivia will counter-argue that Olivia was never informed of Juan's purpose of entering into a contract so long as he could afford the payments. It was not made known to Olivia; thus she had no knowledge of his purpose when entering into the contract. Also the difficulty with payment and budget concerns is reasonably foreseeable in the sale of roses.

Thus no valid frustration of purpose defense.

Anticipatory Repudiation

Where a party expressly repudiates the contract saying they will not perform when performance becomes due and the injured party may immediately bring suit.

Juan just notified Olivia, when two years remained in the contract, that he cannot continue to buy roses from her because of serious budget concerns.

Juan's notifying Olivia is a clear expression through his words that he will no longer perform when his performance becomes due.

Thus Juan anticipatorily repudiated the contract and Olivia may bring suit to recover.

Voluntary Disablement

Where a party through their conduct illustrates that they will no longer perform when performance becomes due.

Juan stopped ordering and making payments for Olivia's delivery. Thus his stopping of his orders illustrates through his conduct that he will no longer perform.

Hence, Juan voluntarily disabled himself.

Substantial Performance

Where a party substantially performs their part of the contract, the injured party is entitled to compensation.

The contract with Olivia and Juan was to deliver roses for Juan's wedding chapel between 300 to 1500 dozen roses annually for the next five years. Olivia had

performed three years of the contract, with only two years remaining. Therefore, she substantially performed her end of the bargain and Juan will be liable for continued payments and compensation for his breach to Olivia.

Breach

An unjustified failure to perform an essential part of the bargain.

Juan and Olivia had a contract for five years where Olivia was to deliver 300 to 1500 dozen roses annually. Since the contract was for five years, any failure on either party to perform is a breach.

Juan notified Olivia that he would no longer perform. Juan had no valid defense for his failure to perform; thus it was unjustified because budget cuts and economic issues with payment are reasonably foreseeable. Since Olivia performed a substantial part of the contract for three years, Juan committed a breach and Olivia is entitled to damages resulting from the breach.

Remedies

Expectation Damage

Where a party is entitled to any expectation damages that result from the party's unjustified breach.

Olivia expected to receive payment from Juan for each delivery for the remaining two years. Since Juan breached his part to pay for the roses, Olivia is entitled to expectation damages and what she expected to receive from the contract with Juan.

Cover Cost

A cover is when a seller resells the goods to another buyer and if the sale price is less than the contract price with the breaching party, the seller is entitled to a cover cost.

Since Olivia mitigated her damages by selling the roses to Ann, she will be entitled to any restitution in cover costs if there is a difference in contract price for the sale of the roses with Juan versus the contract with Ann.

Lost Volume Seller

Where a seller has a large volume of goods and resells the goods for a different price due to a breach, the seller is entitled to compensation for making or the wholesale price minus the resale price.

Olivia is entitled to any lost profit she lost as a lost volume seller since she specialized in roses and sold dozens of them. Olivia is entitled to any lost profits as a result of Juan's breach.

Since the exact amount of damages is not specified since the roses delivered ranged from 300 to 1500 dozen, the court will most likely look at the reasonable average amount that was delivered to Juan, prior to the breach to determine the contract price in regards to damages.

Therefore, Olivia is entitled to the contract price for the remaining two years, or since she mitigated her damages she is entitled to the contract price minus the resale price of the roses for the remaining two years with the contract with Juan.

Olivia vs. Ann

Governing Law

UCC governs the sale of goods.

Roses constitute goods and thus the UCC governs this contract.

Merchants

Merchants regularly deal with goods involved in the contract.

As discussed above, Olivia is a merchant since she regularly deals with the sale of roses and other flowers.

Ann ordered "1000 white stems" to decorate an event hall. The facts do not specify if she regularly deals with the sale of roses; however judging by the excess amount of flowers ordered and since it is for the purpose of decorating an event hall, it can be inferred that Ann is a merchant as well and regularly deals with the sale of roses.

Offer

An offer is a manifestation of intent to enter into a bargain that contains definite and certain terms and is communicated to the offeree.

Ann emailed Olivia an order. Ann's conduct of emailing illustrates through her conduct that she intended to be bound by the offer. The offer stated 1000 white stems to decorate an event hall. The quantity is there, representing 1000. The time was not specified but can be assumed to mean a reasonable time. The subject matter is "white stems." The price is not stated but according to the UCC gap fillers will be applied for

course of dealing, course of performance, or usage of trade, to provide a price for the white stems. Ann emailed Olivia, who is the offeree.

Thus there is a valid offer made by Ann.

Acceptance

Under the UCC an acceptance is permitted in any reasonable manner or medium.

Thus Olivia's shipment of the orchids will constitute an acceptance through her conduct of delivering them.

Shipment of Nonconforming Goods

Where a seller ships nonconforming goods and does not illustrate it was an accommodation is in breach.

Ann will argue that under the UCC, any shipment of nonconforming goods without notifying that it is offered as an accommodation is breach. Ann will state that since Olivia delivered "orchids" and not "roses," which she had presumed since Olivia "specializes in roses", and since it is nonconforming and there is no notice it is offered as an accommodation, that Olivia breached.

Olivia will argue that the term "1000 white stems" is ambiguous and therefore left Olivia to believe she wanted whatever white stems were available. Thus her shipment does indicate a valid acceptance but since the term "white stems" is ambiguous, infra, Olivia will have a valid claim that Ann is still entitled to pay for the "white stems" since she accepted the goods and did not give any notice of her dissatisfaction or concern with what was delivered.

Consideration

Defined Supra

Olivia incurred the detriment to deliver the flowers and she incurred the benefit of being paid for the delivery to Ann.

Ann incurred the benefit of receiving the white stems and Ann incurred the detriment to pay for the white stems delivered by Olivia.

Thus valid consideration.

Statute of Frauds -- Sale of Goods over \$500

A contract must be evidenced in writing and signed by the party to be bound in order to be enforceable when dealing with the sale of goods over \$500.

Here, the email sent by Ann stated that she wanted 1000 white stems. Because the quantity is so large and since Olivia later stated that it was \$5 per stem, it is indicative that the sale of goods over \$500 was involved. Hence it needed to be evidenced by a writing.

Ann will argue there is no enforceable contract because it was not in one complete writing, but only partial writings and thus both parties did not sign it.

Exception -- Substantial Performance

Where a party substantially performs the essence of the bargain.

Olivia will argue that although it is not one complete writing and that it was not signed by Olivia, the fact that she substantially performed takes the sale of the goods over \$500 out of the statute of frauds. Also since Ann accepted the flowers, regardless if she had no time to inquire about the substitute, she still accepted and thus Olivia substantially performed and is entitled to payment.

Unilateral Mistake

Where a party is mistaken about a material fact of the contract.

Ann will argue that she was mistaken as to the term "white stems" as well as the fact that she did not know the price would be \$5 per stem. Ann will state that she should not pay the amount because she was unilaterally mistaken.

However, Olivia will argue that the term "white stems" was ambiguous and that even if it was not what Ann ordered, she accepted the shipment and thus is liable for payment.

Hence, no unilateral mistake.

Ambiguity

Where a term in the contract has more than one meaning the court will usually allow evidence to establish the meaning.

Ann will argue that the term "white stems" was specific to roses since Olivia specializes in roses and she expected to pay for roses but received orchids.

However, Olivia will bring into evidence that "white stems" was ambiguous but in the course of performance or trade usage that "white stems" also refers to orchids as well. Also, if Ann did not want to accept the orchids she could have rejected the shipment but

since she did not object within a reasonable time or state dissatisfaction, she is obligated to perform.

Also the court will provide any gap fillers as well as outside evidence of course of performance and trade usage to support Olivia's claim.

Duress

Where a party enters into a contract because they are left with no other reasonable alternative.

Ann will attempt to argue that she accepted the orchids because she had no time to inquire about substitutes and needed it for the event hall. She will state she was left with no other alternative but to accept the orchids and thus should not be liable to pay for them since she did not have another choice.

However, this will not be a valid defense, because Ann could have argued that it was not what she had ordered and she also could have specified what she wanted in her offer. Since it was ambiguous as to "white stems" and she accepted the shipment, the defense of duress is not applicable since other reasonable options in handling the situation were available.

Thus no valid duress defense for Ann.

Constructive Condition Precedent

Defined Supra

The condition was that Olivia was to deliver the white stems before Ann had a duty to pay.

Since Olivia delivered the white stems, Ann now has a duty to pay.

Thus valid condition precedent.

Breach

Defined Supra

Olivia delivered the white stems as requested by Ann. Since Olivia already performed, she was entitled to receive payment for the roses. Thus since Ann is refusing to pay the higher amount for the orchids, Ann has committed an unjustified breach since she accepted the shipment without any objection.

Thus Ann committed a material breach when her performance was due and Olivia is entitled to compensation.

Remedy

Defined Supra

Since Olivia delivered the white stems that she had available, and since the court will most likely apply the UCC gap fillers for the "white stem" price and if it is a reasonable \$5 per stem, Ann will be required to pay the amount.

Ann accepted the goods without objecting and did not note that she was dissatisfied or that it was nonconforming. Even if the price was higher than she expected, she still accepted the orchids knowing that Olivia expected to be paid.

Thus Olivia is entitled to the payment of \$5 per stem.

QUESTION 1 – SELECTED ANSWER B

OLIVIA v. JUAN

CONTRACT DEFINITION

A set of promises between two or more people wherein the law states performance is a duty, and the breach of which provides a remedy. A valid contract consists of an offer, acceptance, and consideration with no viable defenses.

APPLICABLE LAW

The Common Law governs contracts for the sale of land and for services.

The UCC governs contracts for the sale of movable goods.

Here, we are dealing with a contract for the sale of roses, which are movable goods, and therefore, the UCC will govern.

MERCHANTS

A merchant is one who regularly deals with the types of goods involved in the contract, or who holds themselves out to be knowledgeable about the goods. When the parties are both merchants, they are held to a reasonable standard of good faith and fair dealing.

Here, we are dealing with two merchants. Olivia is a florist specializing in roses, and Juan is the owner of a wedding chapel. Both are considered merchants.

CONTRACT FORMATION

OFFER

The offeror is master of the offer, and provides for the acceptance by the offeree.

An offer is the intent to be bound by definite terms.

ACCEPTANCE

The UCC requires that the acceptance be of mutual assent by the parties involved. Whenever possible, the UCC will strive to see a formation of a contract to benefit all parties.

CONSIDERATION

Consideration is the bargained-for exchange and legal detriment of all parties.

Here, we are informed that there is a valid five-year written contract between Olivia and Juan. We are also informed that the contract involved is for Olivia to sell Juan all the roses he needs for his wedding chapel, which indicates the parties are involved in a Requirements / Outputs contractual agreement.

Where parties agree to provide all the requirements or purchase all the outputs of the products of the other party, the good faith and fair dealing will suffice as proper consideration for the contract. The amount of the quantity will be proportional on a regular basis as agreed by both parties, with no major variances in the quantities.

Therefore, we will proceed with determining any breach, appropriate defenses or remedies for the parties.

STATUTE OF FRAUDS

The statute of frauds requires certain contracts to be in writing and signed by the party to be charged in order to be enforceable.

The types of contracts involved are:

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

Contracts for the sale of land.

Contracts for the executorship/suretyship/administration.

Contracts for marriage.

Contracts that cannot be performed in one year.

Here, the contract is a five-year contract and is for goods that will most likely cost more than \$500.

Therefore, because we are told we have a written contract, the contract satisfies the Statute of Frauds.

PERFORMANCE OF DUTIES / ISSUES WITH PERFORMANCE

Financial Impracticability

When a party is faced with financial difficulty that will no longer allow them to perform their agreed duties, the law may allow for the contract to be ended, voided or nullified.

Here, Juan contacted Olivia at the end of their 3rd year of their contract, and he informed Olivia that he is no longer able to buy roses from Olivia because of serious budget concerns. If Juan's business is in financial difficulty to the extent that he can no longer pay for roses or other items necessary to run his chapel, Juan may be able to prove his financial distress. However, if Juan's business finances are not in serious distress, he will still be obligated to perform his duties to Olivia for his part of the performance of their contract.

Therefore, Juan may or may not be able to claim Financial Impracticability to avoid the remaining two years of his contract with Olivia.

BREACH OF CONTRACT

Anticipatory Repudiation

Anticipatory Repudiation occurs when one party expressly or impliedly acts to avoid or state their inability to perform under the contract.

Here, when Juan contacted Olivia and stated he could not continue to buy roses from her, he Anticipatorily Repudiated his performance of the contract.

Olivia may at that time immediately elect to sue for breach of contract, or she may wait until Juan is scheduled to order his next shipment of roses.

Therefore, Juan will be liable to Olivia for breach of contract by Anticipatory Repudiation.

Requirements and Outputs Contracts

Requirements and Outputs Contracts require the parties to perform in good faith and fair dealing. The amount of goods transacted must be a proportional amount with no great variances. Any major variances will be viewed as a breach.

Here, Olivia agreed to sell Juan as many roses as Juan needed for his chapel. Over three years, Juan bought between 300 and 1,500 dozen roses annually from Olivia. There seems to be a large discrepancy between 300 and 1,500 dozen over a year time period. Olivia has proven that she is able and willing to provide for most likely any amount of roses Juan needs.

Therefore, if Juan can no longer purchase his roses from Olivia, and Juan does not have a viable excuse or defense, Juan will be in breach of his contract with Olivia.

REMEDIES

Mitigation

Olivia must mitigate her damages, and if she has an overstock of roses that Juan will no longer purchase.

Incidentals

If Olivia makes arrangements for a specific and proportionate stock of roses for Juan, Juan will be liable for any incidental expenses to Olivia for maintaining the roses, or perhaps for loss of roses because of overstocking, for the remaining two years.

Expectation

Olivia will be entitled to expectation damages, as she and Juan were under a binding Requirements and Outputs contract. Olivia would be entitled to damages for the roses she expected to sell to Juan but that Juan did not purchase for the remaining two years.

Difference in Contract Price V. Market Price

Olivia will be entitled to the difference in their contract price with Juan and the current market or resale price if she is forced to sell the roses at a lesser price before they die.

OLIVIA v. ANN

CONTRACT DEFINITION. Supra.

MERCHANTS

Here, Olivia is a merchant, and we assume that Ann is not a merchant, but a one-time consumer.

Therefore, Olivia will be held to a higher standard to perform with good faith and fair dealing.

CONTRACT FORMATION. Supra.

Offer. Supra.

The UCC will require the contract to include a minimum of:

The parties involved

Quantity of goods

Here, Ann emailed Olivia an order for "1,000 white stems", but did not specify a price or type of flower. Ann assumed Olivia would send roses, which were her specialty, but Olivia sent orchids instead.

Acceptance. Supra.

Mutual Assent. Supra.

Here, Ann and Olivia were not on the same page for the type of flowers preferred by Ann. However, Olivia did send flowers.

Nonconforming Goods

When the seller sends nonconforming goods, the buyer can do one of any of the following:

Buyer may refuse the goods;

Buyer may accept the goods;

Buyer may accept some of the goods and return the remaining.

Here, the order did not specify the type of flower to be sent.

Ann received the white orchids and was surprised, but had no time to inquire about substitutes. Ann used the orchids for the event.

Therefore, because Ann accepted and did not inquire or contact Olivia in any way to refuse the orchids, Ann will be viewed as accepting the flowers.

Consideration. Supra.

Here, initially, Ann ordered "1,000 white stems" from Olivia, and Olivia shipped white stems to Ann. We have the minimum requirement of the good and the quantity.

Therefore, both parties bargained for an exchange of flowers for payment, and there is valid consideration.

Statute of Frauds. Supra.

If the amount of the order for 1,000 white stems of orchids or roses amounts to \$500 or more, the contract must be in writing and signed by the party to be charged in order to be enforceable.

Here, Olivia billed Ann \$5 per stem, for a total of \$5,000 for the flowers. The contract between Olivia and Ann must be in writing and signed by Ann, to be enforceable under the Statute of Frauds.

Therefore, the contract was an email, but not signed by Ann; the contract will not be enforceable under the SOF.

DEFENSES

Mistake

Ann may claim that she made a mistake by not stating "roses" in the order, but that because Olivia was a rose specialist, Ann assumed Olivia would deliver roses and not orchids. This will fail because Ann used the flowers without contacting Olivia for sending the incorrect flower.

Misunderstanding

Olivia may claim that she made a mistake and sent the wrong flower. This will fail because the only "white stems" available at the time of Ann's order were orchids and not roses.

Ambiguity

A contract may be voided when the terms of the offer and acceptance are ambiguous.

Here, the type of flower was not specified.

Therefore, the contract may be voided due to ambiguity.

BREACH

Major

When a party performs their duty under the agreement, and the other party does not perform, either by performance or payment of goods, a major breach has occurred.

Here, Ann refused to pay \$5,000 to Olivia for the flowers.

Therefore, Ann breached her duty to pay Olivia.

Perfect Tender Rule

When a party performs by delivering the goods under the contract, they have performed under the "perfect tender rule". If the other party does not perform or deliver the goods or payment exactly as stated, they have breached their duty.

Here, Olivia will claim she delivered 1,000 white stems to Ann, yet Ann did not perform by paying her. This claim will fail because the perfect tender of the type of flowers was not stated in the original agreement or offer.

REMEDIES

Expectation.

Olivia may be entitled to the \$5,000 in payment from Ann because Ann used the flowers and never disputed the type of flower sent. Ann never contacted Olivia to inquire or request the roses be sent, or to clarify the specific type of flower she wanted.

QUESTION 2

Alma believed that Ed, her employer, had cheated her out of overtime pay. She asked her friend, Bob, a locksmith, to open a locked drawer in Ed's desk so that she could obtain confidential documents for use in embarrassing Ed into paying her what she thought he owed her. Bob said he would help her.

Alma took Bob to Ed's office, where he opened the locked desk drawer. Just after Alma and Bob had removed the confidential documents from the drawer, Ed came into the office. Startled, he chased Bob onto a balcony and pushed him. Bob fell over the balcony railing and landed on Diane, who was walking on the sidewalk below. Bob was unharmed but Diane died instantly.

1. With what crimes, if any, can Alma reasonably be charged, and what defenses, if any, can she reasonably raise? Discuss.
2. With what crimes, if any, can Bob reasonably be charged, and what defenses, if any, can he reasonably raise? Discuss.
3. With what crimes, if any, can Ed reasonably be charged, and what defenses, if any, can he reasonably raise? Discuss.

QUESTION 2 – SELECTED ANSWER A

1. ALMA'S CRIMES

Alma's Solicitation of Burglary, or In the Alternative Larceny, and Extortion, Merges with the Target Crimes.

Solicitation is the act of requesting, demanding, or encouraging the commission of a specific crime not already planned by another, whether they agree or not. If the target crime is committed, it merges with that charge. Actual and proximate causation must be met.

Here, Alma "asked her friend, Bob, a locksmith, to open a locked drawer in Ed's desk" in Ed's office for purposes of stealing confidential documents to use for her planned extortion. Causation is met because had she not requested Bob's help, the solicitation would not have occurred. Alma is guilty of solicitation, but because the target crimes were committed, it merges, and she will not be charged with solicitation.

Alma's Conspiracy to Commit Burglary, or In the Alternative Larceny, and Extortion, Does not Merge with the Target Crimes.

Conspiracy is the act of agreeing with one or more other people to commit a specific crime or series of crimes with the intent to make such agreement where at least one party believes there is an agreement (in most jurisdictions) and a co-conspirator has made an overt act, including minor preparation, in furtherance of the conspiracy (again in most jurisdictions).

Bob agreed with Alma to break into Ed's drawer for Alma's extortion purposes when he "said he would help her"; Alma intended to make an agreement to commit a crime, did make such agreement, and her actions when she took Bob to Ed's office meet the overt act and show she believed there was such agreement. Causation is met because she would not have entered the agreement had she not asked Bob for help in the commission of a crime. Alma is guilty of conspiracy.

Alma May be Guilty of Burglary.

Burglary at common law was the breaking and entering of the dwelling of another at night with intent to commit a felony. Today it is the entering of any structure of another without license with intent to commit a crime at any time of day, whether breaking or not, in most jurisdictions. Both actual and proximate causation must be met.

Here, Alma and Bob entered Ed's office, a structure, without license, with the intent to steal confidential documents, a crime. Causation is met because the entering of Ed's office with such intent would not have occurred but for Alma taking Bob there, and the result is not too remote or accidental, meeting both actual and proximate causation (as defined by the MPC).

Alma May be Guilty of Larceny, a Lesser Included Offense of Burglary.

Larceny is the taking away by trespass of the personal property of another with intent to permanently deprive them of possession. Actual and proximate causation must be met.

If not all the elements of Burglary are met, Alma may be charged with larceny, because she and Bob removed the documents from Bob's desk. This analysis may be necessary because Ed is Alma's employer, so entering his office may not have qualified for burglary, if she had license to do so. Causation for larceny is met because the documents would not have been taken had Alma not asked Bob to help her take them and brought him to the scene where they were then taken. However, she certainly did not have license to do so for the purpose of stealing documents, so the license should not be recognized, and burglary most likely will be charged.

Alma May be Guilty of Attempted Extortion.

Extortion is a modern crime where possession or title of personal property or money is transferred to the defendant by means of threat. Here, Alma intends to use the confidential documents to threaten Ed with embarrassment, resulting in him paying her money. It is irrelevant that she believes he owes her overtime pay because she is still guilty of the attempt to extort payment by threat of embarrassment. Causation is met because she would not have taken the substantial step toward threatening Ed with embarrassment to get him to give her money if she hadn't entered his office with the intent to steal the documents for this purpose.

Alma is Guilty of Felony Murder if She is Guilty of Burglary, Because Diane's Death is Foreseeable.

Homicide is the act or omission resulting in the death of another human. Involuntary manslaughter is to do so recklessly or grossly negligently; voluntary manslaughter is to do so with intent to kill but adequately provoked by the victim; second-degree murder is to do so with malice aforethought either through reckless disregard for extreme risk to human life or intent to kill (either express or implied), and first-degree murder is to do so with premeditation and deliberation or during the commission of a felony before the defendant has reached safe haven. Actual and proximate causation must be met.

Here, Alma entered Ed's office without license with the intent to commit larceny and/or extortion. This should be sufficient to convict her of burglary. If so, Dianne's death occurred during the course of the burglary when Bob fell on her; she would not have died but for the burglary, and because Ed pushing Bob was a reacting intervening force directly from the burglary itself, her death was not so unforeseeable as to break causation -- it is not too remote or accidental.

ALMA'S DEFENSES

Alma's Defense Against the Agreement of Conspiracy Likely Fails.

Alma may claim she merely asked Bob to help her, and is therefore not guilty of the solicitation which merges with the target crime, but this fails because the facts appear more as if the two are acting as if they have an agreement, rather than Alma simply giving Bob instructions.

Alma's Lack of Specific Intent Defense to Burglary, Larceny, and Extortion Fails.

Burglary, larceny, and extortion all require specific intent, not general intent. Alma made a plan in advance and found a partner in crime to carry it out, she intended the burglary, or in the alternative larceny, and extortion.

Alma's Lack of Intent to Permanently Deprive of Possession Defense to Larceny Probably Fails.

Alma may claim she never intended to keep the documents, but this may fail because the facts don't tell us she intended to replace them once she accomplished her goal, and she may have had no incentive to do so, leading to the presumption she didn't intend to.

Alma Cannot Reasonably Make a Necessity or Duress Defense.

Alma's Defense to Felony Murder of Superseding Cause Fails.

As stated earlier, Ed pushing Bob was not a superseding cause because it was directly reacting to the burglary itself.

2. BOB'S CRIMES

Bob's Conspiracy to Commit Burglary, or In the Alternative Larceny, and Extortion, Does not Merge with the Target Crimes.

Conspiracy is the act of agreeing with one or more other people to commit a specific crime or series of crimes with the intent to make such agreement where at least one party believes there is an agreement (in most jurisdictions) and a co-conspirator has

made an overt act, including minor preparation, in furtherance of the conspiracy (again in most jurisdictions).

Bob agreed with Alma to break into Ed's drawer for Alma's extortion purposes when he "said he would help her"; Bob intended to make an agreement to commit a crime, did make such agreement, and his actions when he went with Alma to Ed's office meet the overt act and show he believed there was such agreement. Causation is met because he would not have entered the agreement had he not intended for the crime to occur. Bob is guilty of conspiracy.

Bob May be Guilty of Burglary.

Burglary at common law was the breaking and entering of the dwelling of another at night with intent to commit a felony. Today it is the entering of any structure of another without license with intent to commit a crime at any time of day, whether breaking or not, in most jurisdictions. Both actual and proximate causation must be met.

Here, Alma and Bob entered Ed's office, a structure, without license, with the intent to steal confidential documents, a crime. Causation is met because the entering of Ed's office with such intent would not have occurred but for Alma taking Bob there, and the result is not too remote or accidental, meeting both actual and proximate causation (as defined by the MPC).

Bob May be Guilty of Larceny, a Lesser Included Offense of Burglary.

Larceny is the taking away by trespass of the personal property of another with intent to permanently deprive them of possession. Actual and proximate causation must be met.

If not all the elements of burglary are met, Bob may be charged with larceny, because Alma and Bob removed the documents from Ed's desk. This analysis may be necessary because Ed is Alma's employer, so entering his office may not have qualified for burglary, if she had license to do so. Causation for larceny is met because the

documents would not have been taken had Alma not asked Bob to help her take them and brought him to the scene where they were then taken.

Pinkerton will Hold Bob Liable for All Alma's Foreseeable Crimes in Furtherance of the Conspiracy.

Bob is guilty of all foreseeable crimes Alma commits in furtherance of the conspiracy. So even if he is unaware of the plan to commit extortion, it is foreseeable so Bob will be guilty of that as well.

Bob May be Guilty of Attempted Extortion Through Co-conspirator Liability, Because He Likely Knew Alma's Purpose for the Burglary.

Extortion is a modern crime where possession or title of personal property or money is transferred to the defendant by means of threat. Here, Alma intends to use the confidential documents to threaten Ed with embarrassment, resulting in him paying her money. It is irrelevant that she believes he owes her overtime pay because she is still guilty of the attempt to extort payment by threat of embarrassment. Causation is met because she would not have taken the substantial step toward threatening Ed with embarrassment to get him to give her money if she hadn't entered his office with the intent to steal the documents for this purpose.

If Alma's extortion plan was known to Bob or even if it was merely foreseeable, Bob will be guilty as well.

Bob is Guilty of Felony Murder through Co-conspirator Liability if He is Guilty of Burglary, Because Diane's Death is Foreseeable.

Homicide is the act or omission resulting in the death of another human. Involuntary manslaughter is to do so recklessly or grossly negligently; voluntary manslaughter is to do so with intent to kill but adequately provoked by the victim; second-degree murder is to do so with malice aforethought either through reckless disregard for extreme risk to human life or intent to kill (either express or implied), and first-degree murder is to do so

with premeditation and deliberation or during the commission of a felony before the defendant has reached safe haven. Actual and proximate causation must be met.

Here, Alma entered Ed's office without license with the intent to commit larceny and/or extortion. This should be sufficient to convict her of burglary. If so, Dianne's death occurred during the course of the burglary when Bob fell on her; she would not have died but for the burglary, and because Ed pushing Bob was a reacting intervening force directly from the burglary itself, her death was not so unforeseeable as to break causation -- it is not too remote or accidental.

Even if Bob is not guilty of conspiracy, which he is, he participated in the burglary during the course of which Diane's foreseeable death occurred, and Bob is guilty of Felony Murder.

BOB'S DEFENSES

Bob's Lack of Specific Intent Defense to Burglary, Larceny, and Extortion Fails.

Burglary, larceny, and extortion all require specific intent, not general intent. Alma made a plan in advance and found a partner in crime to carry it out; she intended the burglary, or in the alternative larceny, and extortion.

Bob's Defense Against the Agreement of Conspiracy Likely Fails.

Conspiracy agreement can be implied through actions not just expressed through words, and the facts show Bob and Alma acting together as they burglarize Ed's office, so he will be found to have entered an agreement.

Bob's Defense to Felony Murder of Superseding Cause Fails.

As stated earlier, Ed pushing Bob was not a superseding cause because it was directly reacting to the burglary itself.

3. ED'S CRIMES

Ed Committed Assault when he "Chased Bob Onto a Balcony."

Assault is the intentional placing of another in reasonable apprehension of imminent bodily harm. A reasonable person in Bob's place would have been in such apprehension, and Ed did so intentionally; Bob's apprehension would not have occurred but for Ed's act, and the result was not too remote or accidental to hold Ed liable, so both actual and proximate causation are met.

Ed Committed Battery when He Pushed Bob, Which Merges with Homicide.

Battery is the intentional touching of a person without consent, causing injury or offense to a reasonable person.

Ed pushed Bob intentionally, touching him in a way offensive to a reasonable person without consent, so he is guilty of battery. But the push led to Bob falling

off the balcony, then falling on Diane, so if Ed is guilty of Diane's homicide, the battery is transferred from Bob to Diane and merges with the homicide.

Ed Committed Homicide When He Pushed Bob Over the Railing -- Either Involuntary Manslaughter, Second-Degree Murder, or First-Degree Murder.

Homicide is the act or omission resulting in the death of another human. Involuntary manslaughter is to do so recklessly or grossly negligently; voluntary manslaughter is to do so with intent to kill but adequately provoked by the victim, second-degree murder is to do so with malice aforethought either through reckless disregard for extreme risk to human life or intent to kill (either express or implied), and first-degree murder is to do so with premeditation and deliberation or during the commission of a felony before the defendant has reached safe haven. Actual and proximate causation must be met.

Here, Ed acted with reckless disregard for extreme risk to human life when he pushed Bob over the railing if that was a substantially certain result of his act, and would therefore be guilty of depraved heart murder, even if he did not intend to kill.

Ed's Intent Toward Bob Transfers to Diane.

Ed intended to push Bob, not Diane, but if he did so with such mens rea as necessary for murder, he is guilty of murdering Diane through transferred intent.

ED'S DEFENSES

Ed's Defense of Property Defense Fails.

Ed's Provocation Defense Fails.

Murder can be mitigated to voluntary manslaughter for adequate provocation where not mere words are used, but that fails here because Bob was merely in his office.

Ed's Lack of Intent to Kill Defense May Fail, If He Acted with Reckless Disregard for Extreme Risk to Human Life.

Ed's Lack of Premeditation and Deliberation Defense May Fail.

QUESTION 2 – SELECTED ANSWER B

1. State v. Alma

SOLICITATION

Solicitation is the act of asking or encouraging another person to commit a criminal act with the intent that the person commits the act. The crime is completed as soon as the asking has occurred.

Here, when Alma asked Bob to "open a locked drawer in Ed's desk so that she could obtain confidential documents for use in embarrassing Ed," that is sufficient to hold Alma criminally liable for the act of solicitation.

Alma will not be able to raise any defenses for this crime.

Alma will be guilty of solicitation.

CONSPIRACY

Conspiracy is an agreement between two or more parties to commit a crime with the intent to agree and the intent to complete the objectives of the crime. The defendants are liable for the committed crimes as well as all foreseeable crimes committed by other co-defendants. Some jurisdictions require an overt act. It does not merge with the resulting crime.

Here, after Alma asked Bob to help her break into Ed's office, Bob said "he would help her." That is sufficient to constitute an agreement.

Next, both Alma and Bob went to Ed's office, where Ed "opened the locked desk drawer." This is sufficient to demonstrate an overt act in furtherance of the conspiracy.

Alma will be guilty of conspiracy.

CONSPIRACY - PINKERTON LIABILITY

Pinkerton liability exists to hold each co-conspirator liable for crimes committed by other co-conspirators, as long as they are foreseeable and in furtherance of the conspiracy.

Here, because Bob committed additional crimes (discussed *infra*), the prosecution will argue that Alma should be liable. Those crimes are foreseeable and in furtherance of the conspiracy; therefore, Alma will be convicted of those crimes as well.

ACCOMPLICE LIABILITY

Accomplice liability includes four different categories: principal in the first degree, principal in the second degree, accessory before the fact, and accessory after the fact. A principal in the first degree is one who is present at the scene and commits at least one element of the crime. A principal in the second degree is one who is present at the scene, but does not commit any elements of the crime. An accomplice is liable for all foreseeable crimes.

Here, Alma will be considered a principal in the first degree since she actually "removed the confidential documents from the drawer." Similar to the liability discussed under Pinkerton (discussed *supra*), she will be held liable for all foreseeable crimes committed by Bob.

LARCENY

Larceny is the asportation or taking away of another person's property by trespass or trick with the intent to permanently deprive.

Here, the prosecution will argue that after Alma broke into Ed's office with Bob and "removed the confidential documents from the drawer," that constitutes larceny.

Alma, on the other hand, will argue that there was no taking away or asportation, since they were both caught in the act by Ed. The facts do not state whether Alma escaped with the documents, so additional facts will be needed to establish this detail.

The prosecution will then argue that even in the absence of Alma physically departing with the documents, asportation does not require an extensive distance from the location where the property was removed from. Even running to the exterior of Ed's office into the hallway will suffice. Also, Alma possesses the mens rea of permanently depriving Ed of the documents, since she was hoping to use them "in embarrassing Ed into paying her what she thought he owed her." The prosecution will prevail under these arguments.

Alma will be guilty of larceny.

BURGLARY

Under common law, burglary is the breaking and entering into the dwelling of another at night with the intent to commit a felony within.

Here, the prosecution will point to the facts that Alma broke into Ed's office to steal.

Alma will argue that the elements of dwelling and night are not met, since the facts do not state when the crime occurred and Ed's office is not a dwelling.

Modernly, burglary is the breaking and entering into the a building with the intent to commit a felony within.

Based on this definition, although the facts do not specifically state that Alma and Bob broke into Ed's office (it is implied that they entered the office since they were able to open the locked desk drawer from within), breaking and entering will be sufficient even if the defendant pushes the door open; therefore, it can be reasonably inferred that a breaking and entering occurred. Moreover, Alma had the intent to commit a larceny (discussed supra). The prosecution will be successful in establishing burglary.

Alma will be guilty of burglary.

MERGER

The merger doctrine provides that lesser included crimes will be merged into more serious crimes if the more serious crimes include the elements of the lesser included crimes.

Here, because burglary includes the elements of larceny, Alma cannot be convicted of both. She will be convicted of the more serious crime of burglary.

ATTEMPT

An attempt is the dangerous proximity of completing the object crime.

Here, the prosecution will charge Alma with attempted extortion, since she was trying to obtain "confidential documents for use in embarrassing Ed into paying her." Since she was caught by Ed while she was in Ed's office, she likely was unable to extort Ed. However, because she possessed the documents, it should suffice for the element of being in dangerous proximity of completing the crime.

Alma will be guilty of attempted extortion.

DEFENSES

a) Necessity

Necessity is the choice between two evils. It applies when faced with a natural force.

Here, Alma may argue that her livelihood depended on receiving the money that Ed owes her (if that is to be the case, which is not specified in the facts). However, a private monetary dispute is not a natural force (such as a hurricane, earthquake, etc.).

Moreover, the prosecution will argue that the law provides civil remedy for employment disputes, including overtime pay. Alma could have sued Ed in civil courts under the Fair Labor Standards Act or other applicable statutes.

Alma will fail to raise this defense.

2. State v. Bob

CONSPIRACY

Defined supra.

Here, because Bob told Alma that "he would help her," they both went to Ed's office, and Bob actually opened the locked desk drawer; all of these will suffice to establish that there was an agreement between Bob and Alma, that they both intended to agree and to complete the object crime, and there was an overt act.

Bob will be guilty of conspiracy.

CONSPIRACY -- PINKERTON LIABILITY

Defined supra.

Bob will be guilty of all foreseeable crimes committed by Alma in furtherance of the conspiracy (discussed supra).

ACCOMPLICE LIABILITY

Defined supra.

Here, Bob will be considered a principal in the first degree, since the facts state that he "opened the locked desk drawer" and "removed the confidential documents in the drawer." He will be held liable for all foreseeable crimes committed by Alma.

LARCENY

Defined and discussed supra.

Bob will be guilty of larceny.

BURGLARY

Defined and discussed supra.

Bob will be guilty of burglary.

MERGER

The merger doctrine provides that lesser included crimes will be merged into more serious crimes if the more serious crimes include the elements of the lesser included crimes.

Here, because burglary includes the elements of larceny, Alma cannot be convicted of both. She will be convicted of the more serious crime of burglary.

BATTERY

Battery is the harmful and offensive touching of another without consent.

Here, the facts state that Bob "landed on Diane," which is a harmful and offensive touching. Furthermore, Diane "died instantly," which demonstrates harm.

Bob will argue that he was actually pushed by Ed, which caused him to fall "over the balcony railing" and eventually land on Diane. Therefore, he lacks the requisite intent to touch Diane. Bob will be successful under these arguments.

Bob will not be guilty of battery.

HOMICIDE / MURDER

Murder is the unlawful killing of another with malice aforethought. Malice can be express or implied, which is demonstrated through the intent to kill, intent to cause serious bodily injury, reckless disregard for human life (depraved heart), or intent to commit a felony.

Here, a death occurred because Diane died.

a) First-Degree Murder

First-degree murder is killing with premeditation and deliberation. It can be shown through a cool and dispassionate killing or pre-design to kill. First-degree murder can also be during the commission of a felony (discussed infra).

b) Felony Murder Rule

The felony murder rule provides that killing that occurred during the commission of a felony will suffice for conviction of first-degree murder. Courts have placed restrictions to require that the felony must be inherently dangerous and separate from the act that caused the death. Causation is also a factor.

The prosecution will argue that because Diane died in the commission of the felony (of burglary), Bob should be convicted for the murder of Diane under first-degree murder. Burglary is a dangerous felony, which will suffice for the purpose of convicting Bob.

Ed, on the other hand, will argue that Diane's death lacks causation. Causation includes but-for and proximate cause.

But-for cause is the actual cause. Here, but-for Bob's running away, he would not have landed onto Diane. The but-for cause is present.

Proximate cause is the legal cause. Legal cause pertains to the foreseeability of the defendant's act. Bob will argue that there is an intervening cause when he was pushed by Ed. Ed's pushing was the superseding cause which breaks the causal connection. Bob will likely prevail under this argument in establishing that proximate cause is not present.

Bob will not be guilty of first-degree murder.

c) Second-Degree Murder

All other types of murder are second-degree murder.

Assuming that Bob will not be found guilty of first-degree murder, the prosecution will charge Bob with second-degree murder.

d) Voluntary Manslaughter

Voluntary manslaughter is killing committed under the heat of passion. Passion is provoked by an adequate provocation that is sudden and intense, the defendant does not have an opportunity to cool off, and indeed did not cool off.

There is no evidence to suggest that there was any provocation between Bob and Diane.

Bob's murder will not be reduced to voluntary manslaughter.

e) Involuntary Manslaughter

Involuntary manslaughter is killing committed due to reckless disregard of a justifiable risk to human life.

Here, Bob will argue that his charges should be reduced to involuntary manslaughter because he lacks the requisite intent to kill Diane. Rather, it was due to him running away from his crime.

The prosecution will then argue that albeit he was pushed by Ed, it is foreseeable that body touching will occur in runaway situations, and Bob should nonetheless be liable for the murder of Diane.

Bob will be guilty of involuntary manslaughter.

DEFENSES

Withdrawal

A co-conspirator can withdraw by announcing his withdrawal to other co-conspirators prior to the commitment of the crime in time for them to abandon their plans. The

defendant will be relieved of future liability for crimes committed beyond that point, but will still be guilty of crimes already committed as well as the crime of conspiracy.

Bob will argue that when he ran away after being caught by Ed, he withdrew from the conspiracy.

However, there is no evidence to suggest that Bob actually announced his withdrawal by notifying Diane.

Therefore, this defense will not apply.

3. State v. Ed

BATTERY

Defined supra.

The prosecution will be able to establish that there is a harmful or offensive touching to Bob. Although Bob was "unharmful," the pushing by Ed is nonetheless offensive.

Ed will raise the following defenses:

a) Self-Defense

Self-defense is a defense as long as reasonable force is used to protect against an imminent attack.

Here, there is no evidence to suggest that Ed was under any imminent attack by Bob or Alma.

This defense will fail.

b) Defense of Property

A defendant may use reasonable force to defend against property. Deadly force is not reasonable.

Here, Ed will argue that he was defending the confidential documents that were being removed from his office.

However, the prosecution will argue that because Ed was chasing Bob, which led to the pushing, that exceeds the scope of defense of property.

This defense will fail.

c) Citizen's Arrest

A citizen can use reasonable force to arrest another if he witnesses the commission of a crime.

Here, Ed will argue that because he saw Bob removing documents from his office, it was a crime and he was arresting Bob.

However, there is nothing from the facts that indicate that Ed was indeed attempting to arrest Bob when he chased him, such as by yelling "I'm arresting you" or something to that effect.

This defense will fail.

MURDER

Defined supra. Ed will be charged for the killing of Diane.

a) First-Degree Murder

Defined supra.

There is no evidence to suggest that Ed premeditated or deliberated.

Ed will not be guilty of first-degree murder.

b) Second-Degree Murder

Defined supra.

Ed will be charged with second-degree murder.

c) Voluntary Manslaughter

Defined supra.

There is no evidence to suggest provocation.

Ed's charges will not be reduced to voluntary manslaughter.

d) Involuntary Manslaughter

Defined supra.

Here, Ed will argue that his charges should be reduced to involuntary manslaughter because he risked human life when he was reckless in pushing Bob off a balcony. It is foreseeable that pushing large objects (such as a human -- Bob) will result in people getting injured or killed.

Ed will prevail under these arguments.

Ed will be guilty of involuntary manslaughter of Diane.

Defenses

None for the murder.

QUESTION 3

County planned to make improvements on one of its roads. To that end, on May 1, County entered into a contract with Installco containing the following terms: County agreed to repave the road by June 1; Installco agreed to install new guardrails, which was expected to take three weeks, after County had completed repaving; and County agreed to pay Installco \$200,000.

On June 15, Installco learned that County was far from completing the repaving of the road. It sent County an email stating: "The June 1 start date for the installation has passed. You knew when we signed the contract that we have another large guardrail installation job starting on August 1 and do not have enough equipment to do both jobs simultaneously. Please advise immediately as to your schedule for completion of the repaving."

On June 18, County responded with an email stating: "We are doing our best."

On July 1, County had not yet completed the repaving of the road. Installco received an offer to do a two-week guardrail installation job beginning immediately. Installco sent County an email stating that it no longer intended to perform the contract because of County's failure to complete repaving.

On August 10, County finally completed repaving the road. It located another company to install the guardrails, but had to pay \$300,000.

1. What arguments can County reasonably make that Installco breached the contract? Discuss.
2. What arguments can Installco reasonably make that it did not breach the contract? Discuss.
3. Who is likely to prevail? Discuss.

QUESTION 3 – SELECTED ANSWER A

1. What arguments can County reasonably make that Installco breached the contract?

U.C.C. V. COMMON LAW:

The Uniform Commercial Code, or UCC, will govern all contracts for the sale of goods which are identifiable and movable at the time of sale. Contracts for services will be governed by the common law.

This is a contract for the installation of guardrails. The providing of the guardrails is just incidental to the service of installing them. Therefore, this contract will be governed by the common law.

This agreement will be governed by the common law.

FORMATION:

Formation is created by mutual assent. Mutual assent is often shown by an offer and acceptance, supported by sufficient consideration.

On May 1st, County and Installco showed present contractual intent by entering a contract with the following terms.

Quantity: Guardrails for the new road.

Time for Performance: To be completed within three weeks of the County finishing paving the road on June 1st.

Identity of Parties: County and Installco

Price: \$200,000

Subject matter: Installing guardrails.

There is valid consideration because County is giving \$200,000 to Installco in exchange for the legal benefit of Installco installing the guardrails.

Therefore, there were clear and definite terms on the part of the contracting party. And as both parties showed a present contractual intent by entering into this agreement, there has been a valid contract formed.

DEFENSES TO FORMATION:

Parol Evidence Rule:

Statements, whether written or oral, made prior to or contemporaneously with the formation of a contract will not be allowed by the courts to enter the contract if the contract is fully integrated.

County will argue that Installco's statement of June 15, showing that County knew that Installco had previous business agreements and that time was of the essence if County wanted Installco to perform, that the court should not allow this statement to enter into the contract because it was made after the formation of the contract.

However, Installco will argue that it falls under one of the exceptions to the Parol Evidence Rule. Installco will argue that because the written email shows a condition precedent to the formation of the contract, the court should allow it in.

Therefore, since this statement falls under one of the exceptions to the rule, it will not be barred from entering into the contract.

BREACH:

Anticipatory Repudiation:

County can argue that Installco breached the contract by stating on July 1st that it would not perform the contract. Installco will defend that County did not fulfill a condition to the contract, and thus Installco was not in breach.

Actual Breach:

County will argue that Installco breached the contract when they did not perform after County finished paving the road on August 10. However, Installco will counter that they were not in breach, because their duty to perform under the contract never arose due to the non-occurrence of a condition precedent to the existence of a contract.

Prospective Inability to Perform:

County will argue that by accepting the contract for another project that was two weeks long and started immediately showed a prospective inability to perform on Installco's part. However, if that project went as planned, it was finished before County finished paving the road. Therefore, it would not have hindered Installco's ability to perform. Thus, County will not succeed in this instance.

2. What arguments can Installco reasonably make that it did not breach the contract?

CONDITIONS:

A condition is an act or event not certain to occur which if excused or satisfied gives rise to or extinguishes a duty to perform under the terms of a contract.

Installco will argue that the County's agreement to finish paving the road by June 1st was a condition precedent to Installco's duty to install the guardrails. This is likely a

condition, because it is an event not certain to occur, and if County does not finish the road on June 1st, Installco's duty to perform does not arise under the terms of the contract.

Excuse/Satisfaction of Condition:

County will argue that when Installco sent the email on June 15th inquiring how long it would take for County to complete the project they were waiving the condition to finish by June 1st.

However, Installco will show that it clearly stated in the communication that it had another job to perform that County knew of when it entered into the contract with Installco.

Therefore, when County sent the email in reply that "We are doing our best," the condition to complete the paving on June 1st was not waived by Installco.

Non-occurrence of a condition precedent:

Installco will therefore be able to argue that because the condition precedent was never fulfilled, satisfied, or excused, its duty to perform under the terms of the contract never arose, and that it is thus not in breach.

Time is of the Essence Clause:

Installco will argue that there was a time is of the essence clause in the contract, and that if County didn't finish paving on June 1st, their duty to perform would not arise. Installco will show that they had a previously existing contract which County knew about, and that was a reason the County job was to start on June 1st, so it could finish the job for the County before moving on to its other project.

3. Who is likely to prevail?

County will probably lose in this action. First, time is of the essence is in this contract to enable Installco to perform. Second, Installco's duty to perform under the contract did not arise unless County finished paving the road on June 1st. County did not finish paving until August 10, almost a month and a half after their speculated date of completion.

Therefore, County will not be able to recover from Installco the \$100,000 extra it had to pay to get another contractor to install the guardrails.

QUESTION 3 – SELECTED ANSWER B

COUNTY (C) v. INSTALLCO (I)

GOVERNING LAW

The UCC will govern contracts for the sale of goods while the common law will govern all other contracts.

Here, the contract is for the installation of guardrails. Although it could be argued that because guardrails are a good, the UCC should govern this contract. However, what C is really bargaining for here is the installation of the guardrails. In fact, as their name indicates, their specialty is a service of installation and not just merely a provider of goods.

Additionally, because the contract involves the installation of equipment which must be installed on a busy highway in such a specialized manner, it is likely that the court would find that it was the installation that was the predominant factor of the contract.

This contract will be governed by the common law.

FORMATION AND DEFENSES

a) Offer

An outward manifestation of present contractual intent, clear and definite in its terms and communicated in such a way so as to create in a specific offeree the reasonable expectation that the offeror is willing to enter into an agreement.

Here, C wanted I to install guardrails and offered to pay I \$200,000 to do so.

Thus, the terms of the offer were sufficiently definite as follows:

Quantity: Enough guardrail to complete the roadway repaved by C.

Time for Performance: By three weeks after C repaved the road, but no later than the first week of August.

Identity of the Parties: I and C.

Price: \$200,000

Subject Matter: Installation of Guardrail.

Further, a reasonable person in I's position would interpret this as an offer.

There has been an offer.

b) Acceptance

An outward manifestation of unequivocal assent to the terms of an offer.

Because I and C "entered into a contract" it would appear that I accepted the terms of the above offer.

There has been acceptance.

c) Consideration

The bargained-for exchange involving a legal detriment and benefit to both parties where each party views his performance as the "price" to be paid for return performance.

Here, I will suffer the detriment of having to perform the installation and provide the guardrail, while incurring the benefit of receiving payment from C, while C will suffer the detriment of having to pay I while incurring the benefit of their roads being repaired.

There is sufficient consideration.

d) Defenses to Formation

None.

CONDITIONS AND COVENANTS

A condition is an act or event, not certain to occur, which if excused or satisfied, gives rise to or extinguishes a legal duty to tender performance under the terms of a contract. A covenant is simply a promise to perform.

a) Express Conditions

The contract specified that before I's duty to perform the installation arose, C would repave the road. C agreed to do this by June 1st.

Thus, C had a duty to repave the road by June 1st. I will argue that because C did not do so their duty to install the guardrails never arose.

C will argue that this was merely a promise and not a condition.

When there is a doubt as to whether a clause is a covenant or a condition, the courts will look to the intent of the parties as demonstrated through the words used.

Here, the words used are that C "agreed" to repave the road and that I "agreed" to install the guardrails.

I is going to argue that this was a condition. C is going to argue that this was a promise.

Before entering into the contract, the facts indicate that I and C had a conversation that I would have another job starting on August 1st and that, because they would need three weeks from when the repaving was done to finish the installation, that C's repaving would need to be done no later than the first week of June; otherwise the contract would not be valid.

Such conversations are considered parol evidence. I will seek to enter parol evidence to show that this was a condition and not a promise.

b) Parol Evidence

Statements whether written or oral which are made prior to or contemporaneously with the formation of a contract cannot alter or vary the terms of an integrated contract.

C will argue that because this conversation took place prior to the actual agreement, it cannot be introduced into evidence.

c) Exceptions to Parol Evidence

I will argue that, because the conversation dealt with a condition precedent to legal effectiveness of the contract itself, it should be admitted.

d) Any Relevant Evidence Test

Even if this argument fails, I will argue that because any relevant evidence should be allowed to show the intent of the parties in regards to whether a contract is intended to be an integrated contract, and because such a conversation would be relevant, he should be able to testify about the conversation.

The parol evidence will likely be allowed into evidence to show that there was a condition precedent to legal effectiveness of the agreement.

Therefore, because the parol evidence will be allowed this clause will likely be viewed as an express condition and thus I's duty to perform never arose.

e) Implied-in-Fact Conditions

The parties have an implied condition that they will act in good faith.

I may argue that C's failure to repave the road shows that they were not acting in good faith.

However, C's e-mail of June 18th indicates that they were "doing their best".

This condition has been satisfied.

f) Implied-in-Law, aka Constructive Conditions

The court will imply that longer performance comes before shorter performance. Therefore, I's duty to install the railing will be a condition precedent to C's duty to pay.

g) Prospective Inability

On June 15th, when I realized that the road had not been paved yet, and that their deadline to begin the work without losing the other job had passed, they asked C for assurances that the road would be paved. Their request for assurances was met with a response that C was "doing their best". This statement by C was NOT adequate assurance.

Because of this, I is entitled to suspend performance and sue for breach.

DISCHARGE OF DUTIES

As stated supra, C's duty to repave was not performed and therefore I's duty to install did not arise.

Additionally, even if the court rejects the Parol Evidence argument, it is likely that because C did not perform this will be viewed as a breach.

C would argue that this would be a minor breach; however, in light of the time factors and that I had another job which it had to complete, this argument will likely fail.

I had not breached their duty because their duty did not arise.

a) Repudiation vs. Mitigation of Damages

However, C will argue that I's acceptance of the other job was a repudiation of the contract.

I will counter that because they had requested but not received assurances, and because they had put C on notice prior to the contract formation that they had another job which they would have to start no later than July 7th (three weeks prior to August 1st), they were entitled to repudiate the contract in order to mitigate their damages, and rightfully did so on July 1st.

C will argue that I was obligated to give them until July 7th to finish the repaving. However, this argument will fail, because they did not respond to I's request for assurances.

b) Prevention

Additionally, I will argue that by failing to pave the road, C prevented them from performing under the contract.

c) Impossibility of Performance

I will also argue that because C failed to pave the road, it was objectively impossible for them to perform their duty under the contract.

Additionally, C had breached their duty because they did not pave the road.

BREACH

As discussed supra, C will argue that I breached but, in fact C breached. C's breach goes to the heart of the contract because it prevented I from performing. Therefore, it will be considered a major breach.

REMEDIES

a) General Damages / Expectation Damages

I will argue that it is entitled to the benefit of its bargain from the contract. This would include the profit that it expected to receive from the project.

C will argue that because it never received any benefit of the contract, it should not be entitled to pay these damages.

Further, C may continue to argue breach by I, in which case it would ask the court to allow it to recover the difference between the contract price of \$200,000 and the amount they had to pay another contractor to install the railing (\$300,000) for a total of \$100,000, plus incidental and reliance damages.

b) Special Damages / Consequential Damages (Hadley v. Baxendale)

Because I properly mitigated its damages, by requesting assurance and then repudiating the contract, it did not suffer any consequential damages.

Conclusion

For the reasons stated above, I is likely to prevail.

QUESTION 4

Rick and Walt are next-door neighbors. Rick hosted nightly rehearsals in his backyard for his band, which featured several electric guitars and amplifiers that he owned. Because the rehearsals were so loud, Walt could not conduct telephone conversations in his house even with the windows closed. He repeatedly asked Rick to lower the volume of his rehearsals, but Rick refused.

One night, while Walt was standing in his own yard, he attempted to disrupt a rehearsal by trying to spray Rick with water from his garden hose. He missed Rick with the water, but hit Cal, another band member, and the amplifiers. The water caused Cal to suffer a severe electric shock when it contacted an electric guitar he was holding. The water also destroyed the amplifiers.

Rick picked up another electric guitar, ran into Walt's yard, and charged at Walt, swinging at his head. Walt ducked and ran into his house.

1. What tort claims, not based on negligence, can Walt reasonably bring against Rick? Discuss.
2. What tort claims, not based on negligence, can Rick reasonably bring against Walt? Discuss.
3. What tort claims, not based on negligence, can Cal reasonably bring against Walt? Discuss.

QUESTION 4 – SELECTED ANSWER A

Walt v Rick

A. Nuisance

Nuisance is unreasonable interference with plaintiff's use and enjoyment of land. In order to determine whether the interference is unreasonable and substantial, the court will look at the following factors:

1) Harm v Utility

The seriousness and probability of harm in comparison to the utility of the activity.

Rick will argue that his music is his life and the utility is very high. Walt will argue that the rehearsals and playing are so loud that he cannot conduct a telephone conversation. Walt will argue that the interference is substantial because it constitutes a breach of the peace. Also, Walt will argue that this occurs nightly, so there is no avoiding the interference.

It is likely that a court will favor the plaintiff in this argument because the harm outweighs the utility due to the breach of the peace caused by and the frequency (nightly) of the interference.

2) Hypersensitivity of the Plaintiff

The sensitivities and particular activities on either side will be considered to determine if that is what is resulting in the claim of interference.

It does not appear that Walt is particularly sensitive to Rick's activities. As discussed above, the interference is a breach of the peace and it occurs every night.

The court will favor the plaintiff in this argument.

3) Natural or Incidental to the Activity

The court will examine whether or not the interference is naturally occurring as a result of the activity, or whether it is clearly artificial and incidental to the activity.

Walt will argue that the use of high output guitars and amplifiers are creating interference that is clearly incidental to the activity.

The court will favor the plaintiff in this argument.

4) Did the Plaintiff Come to the Nuisance

If the plaintiff came to the nuisance and is suing, the court will consider whether the plaintiff still has a nuisance claim, but may have to indemnify the defendant.

It does not appear that the plaintiff came to the nuisance in this case.

B. Battery

Under Tort Law, battery is a volitional and intentional act by defendant which results in a harmful or offensive touching to the person of the plaintiff. The intent associated with tortious battery is that the defendant desired the result, the harmful or offensive touching, or that he was substantially certain that his act would result in it.

Rick committed a volitional act because of his affirmative act of picking up the guitar, running into Walt's yard and charging at Walt. Rick committed an intentional act because he charged at Walt and swung at his head with the intent to cause a harmful or offensive touching. All reasonable persons would agree that hitting someone in the head with a guitar would result in a harmful or offensive touching. However, Rick will argue that he did not hit Walt because he ducked and ran into the house.

Therefore, Walt cannot bring a claim of battery against Rick.

C. Assault

Under Tort Law, assault is a volitional and intentional act by defendant which results in plaintiff's reasonable apprehension of a harmful or offensive touching to their person. The intent associated with tortious assault is that the defendant desired the result, plaintiff's apprehension of a harmful or offensive touching, or that he was substantially certain that his act would result in it.

Rick committed a volitional act because of his affirmative act of picking up the guitar, running into Walt's yard and charging at Walt. Rick committed an intentional act because he charged at Walt and swung at his head with the intent to cause a harmful or offensive touching. All reasonable persons would agree that hitting someone in the head with a guitar would result in a harmful or offensive touching. All reasonable persons would agree that almost being hit by someone in the head with a guitar would result in reasonable apprehension of a harmful or offensive touching. Walt will argue that Rick missed him because he ducked, but that the incident did actually result in his apprehension of a harmful or offensive touching.

Therefore, Walt can bring a claim of assault against Rick.

Rick v Walt

A. Battery

Under Tort Law, battery is a volitional and intentional act by defendant which results in a harmful or offensive touching to the person of the plaintiff. The intent associated with tortious battery is that the defendant desired the result, the harmful or offensive touching, or that he was substantially certain that his act would result in it.

Walt committed a volitional act because of his affirmative act of spraying water from his garden hose into Rick's yard. Walt committed an intentional act because he desired to disrupt the rehearsal by spraying with water. All reasonable persons would agree that

being sprayed by water is an offensive touching. However, Walt will argue that he didn't commit a battery because the water never actually hit Rick.

Therefore, Rick cannot bring a claim of battery against Walt.

B. Assault

Under Tort Law, assault is a volitional and intentional act by defendant which results in plaintiff's reasonable apprehension of a harmful or offensive touching to their person. The intent associated with tortious assault is that the defendant desired the result, plaintiff's apprehension of a harmful or offensive touching, or that he was substantially certain that his act would result in it.

Walt committed a volitional act because of his affirmative act of spraying water from his garden hose into Rick's yard. Walt committed an intentional act because he desired to disrupt the rehearsal by spraying with water. All reasonable persons would agree that being sprayed by water is an offensive touching. All reasonable persons would agree that almost being hit by sprayed water would result in reasonable apprehension of a harmful or offensive touching. Rick will argue that Walt missed him, but that the incident did actually result in his apprehension of a harmful or offensive touching.

Therefore, Rick can bring a claim of assault against Walt.

C. Trespass

Under Tort Law, a trespass is a physical invasion of the plaintiff's real property (land).

Walt committed trespass when he sprayed water over Rick's property line because that is a physical invasion of Rick's property, and because Walt sprayed the water with the intent to hit Rick's property.

Therefore, Rick can bring a claim of trespass against Walt.

D. Trespass to Chattels

Under Tort Law, trespass to chattels is intentional interference with plaintiff's ownership or possessory interest in a chattel.

Walt intentionally interfered with Rick's amplifiers because he sprayed water with the intent of hitting Rick's property. The water actually caused damage to the amplifiers because per the facts, the amplifiers were destroyed.

Therefore, Rick can bring a claim of trespass to chattels against Walt.

E. Conversion

Under Tort Law, conversion is intentional interference with plaintiff's ownership or possessory interest in a chattel that is so severe that the defendant must pay the plaintiff the full value of the chattel.

Walt intentionally interfered with Rick's amplifiers because he sprayed water with the intent of hitting Rick's property. The water actually caused damage to the amplifiers because per the facts, the amplifiers were destroyed. Walt will have to pay the full value of the amplifiers because they were destroyed.

Therefore, Rick can bring a claim of conversion against Walt.

Cal v Walt

A. Battery Due to Transferred Intent

Under Tort Law, battery is a volitional and intentional act by defendant which results in a harmful or offensive touching to the person of the plaintiff. The intent associated with tortious battery is that the defendant desired the result, the harmful or offensive touching, or that he was substantially certain that his act would result in it. Transferred intent can occur as a result of the defendant's intent to target one party, but instead the

harm falls on a different victim. It can also occur where the defendant commits one intentional tort, and the intent associated with that tort transfers to another intentional tort. The intentional torts that apply to transferred intent are Battery, Assault, Trespass to Chattels, Trespass to Land and False Imprisonment.

Walt committed a volitional act because of his affirmative act of spraying water from his garden hose into Rick's yard. Walt committed an intentional act because he desired to disrupt the rehearsal by spraying with water. All reasonable persons would agree that being sprayed by water is an offensive touching. Cal will argue that although Walt intended to hit Rick, he still committed a battery under the theory of transferred intent, because he hit him instead. As well, Cal will argue that his was both a harmful and offensive touching because he was hit by water and shocked by his electric guitar when it got wet.

Therefore, Cal can bring a claim of battery against Walt.

B. Assault Due to Transferred Intent

Under Tort Law, assault is a volitional and intentional act by defendant which results in plaintiff's reasonable apprehension of a harmful or offensive touching to their person. The intent associated with tortious assault is that the defendant desired the result, plaintiff's apprehension of a harmful or offensive touching, or that he was substantially certain that his act would result in it. Transferred intent can occur as a result of the defendant's intent to target one party, but instead the harm falls on a different victim. It can also occur where the defendant commits one intentional tort, and the intent associated with that tort transfers to another intentional tort. The intentional torts that apply to transferred intent are Battery, Assault, Trespass to Chattels, Trespass to Land and False Imprisonment.

Walt committed a volitional act because of his affirmative act of spraying water from his garden hose into Rick's yard. Walt committed an intentional act because he desired to disrupt the rehearsal by spraying with water. All reasonable persons would agree that

being sprayed by water is an offensive touching. All reasonable persons would agree that almost being hit by sprayed water would result in reasonable apprehension of a harmful or offensive touching. Cal will argue that although Walt intended to hit Rick, he still committed a battery under the theory of transferred intent, because he hit him instead. As well, Cal will argue that Walt's battery actually resulted in his apprehension of a harmful or offensive touching.

Therefore, Cal can bring a claim of assault against Walt.

C. Trespass to Chattels

Under Tort Law, trespass to chattels is intentional interference with plaintiff's ownership or possessory interest in a chattel.

Walt intentionally interfered with Cal's guitar because he sprayed water with the intent of hitting Rick's property and disrupting the rehearsal. The water actually caused damage to the guitar because per the facts, the guitar and Cal suffered an electric shock, assuming that an electric shock would harm an electric guitar.

Therefore, Cal can bring a claim of trespass to chattels against Walt if he can show damages to his guitar in this case.

QUESTION 4 – SELECTED ANSWER B

I. WALT v. RICK

A. NUISANCE

Nuisance is an intentional act that causes an unreasonable and substantial interference with the use and enjoyment of another's land.

1) Intent.

Intent can be established when the defendant acted with the desire that the result occurs or when the defendant acted knowing with substantial certainty that the results will occur.

Here, the facts indicate that Rick hosted every night loud rehearsals with his rock band in the backyard. Since Walt had repeatedly asked Rick to lower the volume of the rehearsals, Rick refused to do so and continued at the usual loudness. Therefore, it can be concluded that Rick acted with the requisite intent to hold loud rehearsals.

2) Unreasonable and Substantial Interference.

Interference is unreasonable, when it would bother a reasonable person, and substantial, when it occurs over a long period of time or very intensely.

Here, the facts indicate that Walt was not able to have a telephone conversation in his house even with the windows closed, which would likely be objectionable to a reasonable person. Also, the fact that those rehearsals took place every night means that they were a substantial interference of Walt's use and enjoyment of his house.

Thus, Walt will likely be able to establish a successful claim of nuisance.

B. TRESPASS TO LAND

Trespass is an intentional act that causes an unauthorized entry onto another's land.

Intent, see definition above.

Here the facts indicate that Rick ran into Walt's yard, after Walt had sprayed water over into Rick's yard. Rick clearly desired to run into Walt's yard and he did so without getting prior permission from Walt.

Therefore, Walt will likely be able to successfully establish a claim of trespass to land.

C. ASSAULT

Assault occurs when the defendant acted with the intent to cause the plaintiff reasonable apprehension of an immediate harmful or offensive touching.

1) Intent, see definition above.

The facts indicate that Rick charged with an electric guitar at Walt and swung it at Walt's head. Rick, therefore, very likely desired to hit Walt and acted with substantial certainty that he would be able to hit Walt with the guitar.

2) Reasonable Apprehension of an Immediate Harmful Touching

The fact that Walt ducked shows that Walt saw that Rick swung the guitar at him and that he (Walt) knew that he would be hit, if he did not duck away.

Walt certainly ducked, because he feared to be hit by the guitar.

Thus, Walt will likely establish a successful case of assault against Rick.

II. RICK v. WALT

A. TRESPASS TO LAND. Definition, see above.

Intent, see definition above.

Here the facts indicate that Walt sprayed water over into Rick's yard, meaning to spray Rick with water from his garden hose. It is conceivable, since the water was sprayed from a hose and presumably a good amount of water came out, that some of the water also went onto the ground of Rick's back yard, causing a physical, unauthorized entry onto land.

Therefore, Rick will likely be able to successfully establish a claim of trespass to land.

B. CONVERSION

Conversion occurs when the defendant exerted complete control and dominion over the plaintiff's property or if the defendant in any other way substantially interfered with the use, enjoyment and property rights of the plaintiff.

Here, the facts indicate that some of the water that Walt sprayed over into Rick's yard, as discussed above, contacted one of Rick's electric guitars which was consequently destroyed. The destruction goes beyond a mere 'trespass to chattels' situation and constitutes a highly substantial interference with Rick's property.

Here it is assumed that the electric guitar belonged to Rick, since the facts state that Rick owned several guitars. If the electric guitar belonged to Cal, then Cal would be able to assert the claim of conversion.

In any case, Rick will be able to successfully assert a claim of conversion against Walt and will be able to recover the entire replacement cost for the guitar.

C. ASSAULT

See definition above.

1) Intent, see definition above.

The facts indicate that Walt tried to spray Rick with water from the garden hose; thus he had an intent to either touch or cause apprehension to Rick.

2) Reasonable Apprehension of an Immediate Offensive Touching

The facts don't indicate whether or not Rick saw that Walt tried to spray him with water. While being sprayed with water would not be harmful, it might constitute a potentially offensive touching.

Since Rick might not have seen what Walt attempted to do and since Rick, therefore, was likely not apprehended, Rick will likely not establish a successful case of assault.

III. CAL v. WALT

A. BATTERY THROUGH TOUCHING WITH WATER

Battery occurs when the defendant acted with the intent to cause the plaintiff a harmful or offensive touching.

1) Intent, see definition above.

Here, the facts state that Walt sprayed the water into Rick's yard to disrupt the rehearsal. Thus, Walt acted with intent.

2) Transferred Intent.

When a person intends to commit a tort to one person, but hits another person instead, then the intent transfers from the one person to the other person.

Here, the facts indicate that Walt tried to spray Rick with water, but he missed Rick and hit Cal instead. Thus, Walt's intent transferred from Rick to Cal.

3) Offensive Touching.

An offensive touching is a touching that is against a person's dignity.

While being sprayed with water was likely not a harmful touching, it certainly constituted an offensive touching of Cal. Therefore, Cal will likely assert a successful claim against Walt for being sprayed with water.

B. BATTERY DUE TO ELECTRIC SHOCK

Battery, see definition above.

Besides being sprayed with water, Cal experienced another touching by Walt, this time a harmful touching. Here, the facts indicate that Cal suffered a severe electric shock when the water got into contact with the electric guitar that he was holding. Since Walt was the one who sprayed the water which ultimately caused the harmful touching, Walt will very likely be held liable for this kind of touching as well.

C. CONVERSION

The conversion of the electric guitar was discussed under Rick's claims against Walt. However, if the electric guitar belonged to Cal, then Cal would be able to assert the claim of conversion against Walt, as discussed under Rick's claims.