

393 REVIEW QUESTIONS SKELETON ANSWERS

#1

- a) This is an illegal contract and the court will not enforce it.
- b) Chad's was aware that Kurt was under incapacity so cannot enforce the obligation.
- c) He could sue Bob for negligence. Bob owed him a duty of care. Did Bob breach a reasonable standard? Should he have warned Kurt of the danger of leaving the store on the skates in his condition? If Bob had warned Kurt would Kurt have paid attention to him? Should Bob have refused to sell the skates to Kurt? Is that what a reasonable sales person would have done? (Probably not)

If Bob is liable, Chad's will be vicariously liable.

If Bob is liable, Kurt should be found contributorily negligent and his award will be reduced by his proportionate liability.

- d) Kurt owed the woman a duty of care and breached it when he skated down the street drunk. He is liable and she is not contributorily negligent.

Did Bob owe the woman a duty of care. Was it reasonable for him to foresee that his actions would affect her, and if so, what should he have done differently? If he is found liable, Chad's will be vicariously liable.

#2

- a) Will, Bev and Jordy are in partnership because they are carrying on business together with a view to profit. Each partner has unlimited personal liability for the debts of the partnership and can bind the partnership if carrying on in what appears to be the ordinary course of business. The medallions would appear to be part of WBJ's business and Bev and Jordy could each be held 100% liable for the debt incurred by Will.
- b) As partner Will owes the partnership a fiduciary duty and would have to disgorge to the partnership any profit made if he breaches it.
- c) According to the implied terms in the Partnership Act, the profits would be divided equally.

#3

- a) This is a sale of goods and so the implied terms as to merchantability and suitability apply. DB would be liable for damages that are reasonably foreseeable, and these damages would likely qualify.

- b) Again, this is a sale of goods and RRM would be liable for damages that are reasonably foreseeable. Because RRM probably knows the business the DM is in, it could well be liable for all these damages (discuss).
- c) These were unascertained goods and title passed when the goods were delivered to the carrier. RRM would not be liable to DM.

#4 Did the auditors owe Jed a duty of care? Although the advice was in a business context and the adviser possessed special skill, the auditor was not aware of the specific purpose for which Jed used the statements. According to the **Hercules** case, the auditor is not normally liable when a shareholder uses the statements as guidance for investment decisions.
Another issue could be whether Jed relied on his own accountant or on the statements in making his decision.

#5

The restaurant should be liable to Len under s. 18a and 18b of the Sale of Goods Act – but the restaurant might have a defence based on the argument that the sale of goods was for the content of the bottle, and not for the bottle itself.

Len could sue Pop's for negligence, but it would probably not be liable because it did not manufacture the bottle and so did not act carelessly.

Len could sue Glassworks for negligence, and unless it could show that it took all reasonable care, it would be liable.

Pop's and Glassworks are separate corporations, and the directors, shareholders and officers enjoy limited liability, so only Glassworks would be liable for the claim.

#6

- a) Albert would not be bound by the contract. Albert did not create an impression that Herb had authority.

The listing agreement is a contract between Herb and Albert, and Sally would get no rights under it.

Sally could sue Herb for breach of warranty of authority.

- b) Are the damages reasonably foreseeable? Probably yes, because this is common in the real estate industry.

#7

a)

Moe is assignee of Dexter's rights under the agreement. As assignee Moe takes subject to the equities between the parties. Any defence that Jerry would have to paying Dexter is a good defence against Moe.

Does Jerry have a defence to paying Dexter? B.C. law prevents Jerry paying this commission to Dexter, so the contract is illegal. A contract that involves illegality is unenforceable by a party that knowingly agreed to illegality. Moe would not be able to collect from Jerry.

b)

Is Anna holder in due course of a negotiable instrument? This is not a negotiable instrument because there is no sum certain. Jerry defence of illegality will succeed in an action by Anna, because she is an assignee.

c)

Will Jerry be liable to Darcy?

An agent is independently liable for torts committed while representing a principal.

Jerry told Darcy that the property was zoned for commercial use. He does not have a contract with Darcy, but Darcy could sue for negligent misstatement.

Jerry owed Darcy a duty of care – the advice was given in a business context by someone with special skill who knew she was relying on the advice.

The advice did not meet a reasonable standard – it is easy to check zoning and the salesperson should not simply rely on the vendor as a source of information.

The breach caused harm – if she had not received that advice Darcy would not have bought the property. Damages would be the difference between what Darcy paid for the property and what it was actually worth.

There was a clause in the agreement between Mike and Darcy that said that the purchaser was relying on her own inspection. This clause would not protect Jerry, who was not a party to that agreement. The rule of privity of contract applies.

d)

If Jerry and Dexter are found to be partners, Dexter would have unlimited liability for Jerry's actions. A partnership is persons carrying on business in common with a view to profit (unincorporated). Partnership involves not only profit-sharing, but also joint management and risk taking (**Lanz**). Though Jerry and Dexter are splitting commissions, it is not clear that that would qualify as profit-sharing, and there is no indication of joint management or risk-taking. They are not partners.

Could Dexter be liable on the basis of apparent partnership?

In the **Foothills** case, Naik created an impression of partnership and was held liable as a result. If Dexter had described himself to Darcy as Jerry's partner, he could be held liable as an apparent partner (though other cases indicate that Darcy would have had to be dealing with Jerry because of that impression of partnership).

#8

a) April committed misrepresentation - a false assertion of fact that induced Charles to enter into the contract. It is too late for Charles to rescind, and unless he can show negligence

or fraud, which seems unlikely, he will have no remedy.

- b) Unless Elmer was aware that the statements were being prepared for a purchaser of the business, Elmer will have no liability to Charles.
- c) If this clause were in the contract, Charles would have to show fraud to have a remedy.
- d) Aunt Sophie did exercise free choice and was not dominated by Charles, so there is no undue influence (**Buckwold**). There was no unconscionability because this was not necessarily an unwise contract, and Aunt Sophie does not appear to be under any gross obvious disadvantage.

#9

a)

Will Contractor Inc. be liable to Pemberton on this contract made on its behalf by Buz?

Buz did not have actual authority to make the contract – his authority was restricted under his agreement with the other shareholders and directors.

Did Buz have apparent authority to make the contract? The question would be whether in making Buz director and business development manager Contractor inc. was creating an impression that Buz had authority to contract on behalf of the company. I would argue that Buz was not the president, or sales manager, and that Pemberton should have questioned Buz's authority to bind the company, but this is debatable. The restriction in the agreement with the other directors would not be relevant because Pemberton would not know about it.

b)

Is the Bank of Good Hope a holder in due course of a negotiable instrument?

A cheque is a negotiable instrument but the Bank of Good Hope is not a holder in due course because it did not acquire the cheque through endorsement. It would have the rights of a holder in due course if the cheque went through the customer's account, but, as in the Rock case, that does not appear to have occurred.

The Bank of Good Hope is just a regular assignee, and therefore subject to the equities between the parties. Because Pemberton has a defence to paying Contractor inc. that same defence will be good against the bank of Good Hope. The bank will have to sue Contractor Inc.

#10

Rachel would likely sue Sally and Todd for negligence and Wholesome Eating on the basis of vicarious liability?

To prove a case in negligence she must show that the defendant owed her a duty of care, that there was a breach of a reasonable standard, that the breach caused harm and that damages were reasonably foreseeable.

As a property owner with a dog, it would be reasonable for Sally to foresee that her actions would affect cyclists on the street outside her property.

Did she breach a reasonable standard? She would have a duty to keep her dog under control, but she would say that in having the electrified fence she was doing her duty. In spite of the fence, should she have done more to ensure that her dog would not scare people on the street? I would argue that she should have done more (debatable).

Her breach caused harm, and the type of damage is reasonably foreseeable.

As a driver, Todd would owe a duty of care to cyclists on the road.

Did he observe a reasonable standard? It may be that there was little he could have done to avoid the accident. If Rachel swerved right in front, it may not matter that he was traveling slightly over the speed limit – he would have hit her regardless. If that is the case, he will not be liable.

If Sally and Todd are found liable, the court will apportion liability between them according to contributory negligence, and damages will be apportioned accordingly. Rachel could collect the full amount from either one.

An employer, Wholesome is vicariously liable for torts committed by Todd in the course of employment. If he is found liable to Rachel, Wholesome will be vicariously liable.

Wholesome might sue Sally and Rachel for negligence.

Did Sally owe Wholesome a duty of care? I think it would be reasonable to foresee that motorists might be affected by her dog.

Did she exercise a reasonable standard of care? I would argue that she should have done more to prevent this type of accident and that she could be held liable to Wholesome.

Would Rachel be liable to Wholesome in negligence?

She does owe a duty of care to motorists. Swerving in front of the van caused it to collide, but her action would probably be found to be natural and not unreasonable in the circumstances.