

QUESTION #1

Kurt was waiting to cross the street when he saw a car driven by Sam proceed through a red light and hit a car driven by Barb. Barb's car was severely damaged. While Barb was calling the police, Kurt approached Sam and said he had seen the accident. Sam said that if Kurt disappeared before the police arrived and kept his mouth shut about the accident, Sam would pay him \$1000. Kurt agreed, and Sam gave him an immediate payment of \$100.

Kurt used part of the \$100 to buy himself a bottle of whisky which he consumed while sitting on a park bench. While he was sitting there he saw happy people skating by on their roller blades, and decided that roller blades were what he needed. He staggered a bit, but managed to make his way to Chad's, a nearby sporting goods store. The sales clerk, Bob, had some difficulty fitting Kurt with a pair of roller blades because Kurt had trouble getting his feet into them and could not do up the laces. From the smell of Kurt's breath, Bob assumed that Kurt had been drinking. Kurt staggered to the counter with the roller blades on and gave Bob a cheque for \$450 drawn on the Downtown Credit Union to pay for the blades.

Kurt left the store on his new roller blades, proceeded down the sidewalk and smashed into an elderly woman who fell, breaking her hip. Kurt broke his arm. Kurt phoned the Downtown Credit Union and stopped payment on the cheque he wrote to Chad's.

a) 5 MARKS 7 MINUTES

Sam refused to pay Kurt the extra \$900 he promised him. Would Kurt be able to sue Sam successfully for the \$900? Explain fully.

b) 5 MARKS 8 MINUTES

Because of the stop payment order placed by Kurt, the Downtown Credit Union refused to honour Kurt's \$450 cheque in favour of Chad's.. Would Chad's be successful in a law suit to collect the \$450 from Kurt? Explain fully.

c) 15 MARKS 22 MINUTES

Kurt has been advised that he could sue Bob and Chad's successfully to recover damages suffered as a result of his broken arm? Do you agree? Give full reasons for your answer.

d) 10 MARKS 15 MINUTES

The elderly woman who broke her hip intends to sue Kurt, Bob and Chad's to recover damages suffered as a result of her injuries. Do you think she would be successful? Give full reasons for your answer.

QUESTION #2

Bev and Jordy were working as employees in a souvenir shop owned by Will. The shop was in poor financial shape and Bev and Jordy thought it needed some fresh ideas. They suggested that they should refocus the shop to sell items related to science fiction movies and television shows. Will thought it was a great idea and they agreed to pool funds to purchase inventory, and to share profits from sale of the items. Bev and Jordy each contributed \$3000 and Will contributed \$10,000. They renamed the shop WBJ's Space Junk. After 6 months sales were good and the business was profitable.

While on a holiday in Asia, Will attended a manufacturer's convention, where he saw an excellent reproduction of a medallion worn on a popular space television show. The medallions were manufactured by Knockoff Enterprises Ltd. (KEL). He ordered 2000 of the medallions, paying an initial payment of \$10,000, and agreeing to pay KEL the balance within 2 months. When he returned home, Will sold the medallions on his own for \$200 each. He did not sell the medallions in WBJ's Space Junk, nor did he tell Bev and Jordy about the medallions. More than 2 months have now passed and Will has not paid the balance owing to KEL. KEL has threatened to sue WBJ's Space Junk to recover the amount owed.

a) 10 MARKS 15 MINUTES

Could KEL sue WBJ's Space Junk and Bev and Jordy successfully to recover the amount owing for the medallions? Explain fully.

b) 10 MARKS 15 MINUTES

Would Will have any legal liability to Bev and Jordy arising out of his sale of the medallions? Explain fully.

c) 5 MARKS 7 MINUTES

How should the profits of WBJ's Space Junk be divided? Explain fully.

QUESTION #3

Red Robin Mills, a flour producer in Vancouver, had a contract to sell large quantity of flour to Delicious Bakeries, a firm that was located in Victoria and manufactured pastries and cakes for retail outlets throughout Vancouver Island. The contract specified that the flour was to be delivered via an independent trucking firm to the Delicious Bakeries plant in Victoria.

The flour was delivered to Delicious Bakeries and Delicious Bakeries used it in baking. Delicious did not notice that the flour was infested with insects. The retail outlets to which Delicious sold the baked products discovered the problem when irate customers returned various products to them because they did not want to eat insects (even if the insects were dead). Many customers of the retail outlets are now reluctant to buy anything from them because they were disgusted by the

fact that they had bought baked goods containing insects. The retail outlets intend to sue Delicious for their lost profits and goodwill, and say that they do not intend to buy products from Delicious ever again. Delicious destroyed the remaining flour.

a) 10 MARKS 15 MINUTES

Do you think the retail outlets would be able to sue Delicious Bakeries successfully for lost profits and loss of goodwill resulting from their sale of the tainted pastries and cakes? Give full reasons.

b) 15 MARKS 22 MINUTES

Would Red Robin Mills be liable to Delicious Bakeries for the value of the flour destroyed, for Delicious Bakeries' lost profits, for the loss of goodwill to Delicious and for any damages Delicious has to pay to the retail outlets? Give full reasons.

c) 5 MARKS 8 MINUTES

Assume that the flour was fine when it was delivered to the trucker, but that it became infested with insects while en route to Delicious. Would this change any liability Red Robin Mills might have in part b)? Explain fully.

QUESTION #4 10 MARKS 15 MINUTES

Jed owned shares in ABC Ventures Inc., a publicly traded corporation. At last year's annual general meeting, shareholders were presented with audited financial statements for ABC. Jed noticed that ABC's revenues looked poor and so after looking at the statements and consulting his accountant, he sold his shares in ABC. During the past 6 months ABC's shares actually doubled in value. A careful review revealed that there was an obvious error in the audit which resulted in revenues being under-reported. Jed intends to sue the auditors for the \$50,000 he would have made on his shares had he kept them 6 months longer. Giving full reasons for your answer, assess whether Jed will be successful.

#5

Len purchased a bottle of POP's Root Beer in a restaurant. The root beer was manufactured by POP's Root Beer Inc. When the waiter placed the root beer on the counter in front of Len, the bottle exploded. Flying glass from the bottle struck Len in his eye. Unfortunately Len only had the use of that one eye because of a previous accident. As a result of being struck by the glass, vision in that one good eye was reduced to about 20% of what is considered normal.

The cause of the explosion was that Glassworks Inc., which had manufactured the bottle, had inadvertently used defective glass. Glassworks Inc. and POP's Root Beer Inc. are two different corporations but have the same officers, shareholders and directors. POP's has many million dollars worth of assets; Glassworks has none.

Assess the legal rights Len would have to compensation for his injury from the restaurant, POP's Root Beer Inc., and Glassworks Inc. Is the fact that POP's and Glassworks have the same directors, officers and shareholders relevant to your answer?

QUESTION #6

Albert listed his house for sale with Herb, a licenced real estate salesperson. Under the terms of the listing agreement between Herb and Albert, Herb was authorized to advertise the house for sale, show prospective purchasers through it, and refer any offers to Albert for consideration. Albert agreed to pay Herb a commission if a binding contract of purchase and sale was entered into, and to accept an offer of \$375,000 or over provided that the purchaser agreed to take possession of the house before June 30th. The listing agreement was in writing, under seal and signed by both Albert and Herb.

Albert left town for a month-long vacation. The day after he left, Herb showed Sally through the house. Sally liked the house, and made a written offer to purchase it at a price of \$380,000. She agreed to take possession June 15th. Herb attempted to reach Albert, but was unsuccessful. Herb did not want Albert to lose the deal, and so Herb signed an acceptance of Sally's offer on Albert's behalf. When Sally asked Herb whether he could do that, Herb replied that Albert had given Herb the authority to accept offers while Albert was away.

When Albert returned from vacation and learned what Herb had done, he was very angry. Albert said that he thought the listing price had been too low, and that he would not go through with the sale to Sally. Herb said that Albert had agreed to accept an offer of \$375,000 or over, so Herb was just carrying out instructions. Albert refused to go through with the deal, and Sally threatened to sue Albert and Herb.

a) 15 MARKS 22 MINUTES

Assess the legal rights and obligations of Sally, Herb and Albert in this situation.

b) 5 MARKS 8 MINUTES

Assume Albert is found liable to Sally for breach of contract, and that Sally is entitled to damages. Sally says that because Albert would not convey his house to her, she was forced to breach the contract she had entered into to sell her house to Betty, who is claiming \$20,000 in damages from Sally. If Sally is liable for Betty's damages, will Sally be entitled to collect that amount from Albert? Give full reasons.

#7

Jerry is a real estate salesperson in Vancouver and has a close business relationship with Dexter, a real estate salesperson in Toronto. Jerry and Dexter refer deals to each other and split commission 50/50 on any deal one refers to the other. When talking to real estate clients, each refers to the other as his "partner". After a number of referrals, Jerry owed Dexter \$20,000. Jerry has not paid Dexter, and after making many demands for payment, Dexter transferred the right to collect the amount to Moe. Dexter has now found out that the laws of B.C. and of Ontario prevent payment of real estate commission to anyone not licenced in their own province. Jerry does not have a real estate licence in Ontario, and Dexter does not have a real estate licence in B.C. Dexter was been advised that he would have to sue in B.C. to collect the amount from Jerry.

a) 10 MARKS 15 MINUTES

Moe is suing Jerry to collect the amount due under the agreement between Jerry and Dexter. Will he be successful? Explain.

b) 5 MARKS 8 MINUTES

After many demands, Jerry had signed a promissory note in favour of Dexter that stated as follows:

"I promise to pay Dexter 50% of the commission I receive from any business Dexter refers to me".

Dexter endorsed the note over to Anna. Anna has notified Jerry that she will sue him on the note if he does not pay immediately. Will she be successful? Explain.

c) 15 MARKS 23 MINUTES

In a recent transaction in which a property was sold to Darcy, Jerry, who was representing the vendor Mike, told Darcy that the property was zoned for commercial use. The contract between Mike and Darcy included the following clause: "The purchaser agrees that she is relying on her own inspections and that no pre-contractual statements induced the contract." Darcy took title, then found out that the property was not zoned for commercial use. When she complained to Jerry, he said that he was not responsible because he truly believed that the property was zoned commercial, because that is what Mike had told him. Darcy intends to sue Jerry. Assess his chances of success.

d) 10 MARKS 15 MINUTES

Assume that Jerry is liable to Darcy. If Darcy joins Dexter as defendant in the legal action against Jerry, would there be any basis on which to hold Dexter liable?

QUESTION #8

April Showers owned a flower shop which she was anxious to sell. She advertised the shop for sale in the local newspaper. Charles First visited her shop shortly thereafter to discuss a possible purchase. During those discussions, April stated that 1996 sales totalled \$180,000, and that she was sure that 1997 sales would exceed \$200,000. Charles was impressed with these figures, and on September 10, 1997 offered to purchase the flower shop for \$55,000. April accepted his offer. Written documents were prepared and signed, and Charles took possession of the flower shop on October 1, 1997. There was no mention of sales figures in the written documentation.

Charles financed the purchase of April's business by borrowing \$40,000 from the Enterprise Bank. The Enterprise Bank required collateral for the loan, and as Charles' other assets were already heavily mortgaged to secure other obligations, Charles said that his elderly Aunt Sophia would agree to mortgage her house to secure his loan from the Enterprise Bank. The Bank prepared the necessary documents and gave them to Charles to take to his aunt.

Charles took the mortgage documents to his Aunt Sophia for signature. She had reservations about signing because her house was her only asset, but Charles promised her half of the profits of his business, and assured her that this was a risk-free venture. Enticed by the prospect of future gains, Aunt Sophia signed the mortgage documents, Charles returned them to the Enterprise Bank, and loan proceeds were advanced to finance the purchase.

In December of 1997, Charles was shocked to find that sales were far below April's predictions. He engaged an accountant to do an analysis. The analysis revealed that actual sales for 1996 were only \$160,000. Charles confronted April with these figures. April said that she was basing her statement about sales for 1996 on financial statements which had been prepared for her by her accountant, Elmer Ace. Subsequent analysis showed that Elmer's statements were incorrect. He had included as sales large orders which had been placed and subsequently cancelled.

Because of poor sales figures, Charles has defaulted on his loan to the Enterprise Bank, and the Enterprise Bank is now pursuing its rights under the mortgage and foreclosing on Aunt Sophia's house. Charles wants April to take the flower shop back and give him his money back. April says she has no responsibility for his losses.

a) 15 MARKS

Will Charles have any legal recourse against April?

b) 10 MARKS 15 MINUTES

If Charles is unsuccessful in collecting from April, will he have legal recourse against Elmer?

c) 5 MARKS 15 MINUTES

Assume that the contract between April and Charles contained the following clause:

"The parties agree that there are no representations, guarantees or warranties, oral or otherwise, relating to the business, other than those which appear herein in writing."

Would this affect the legal rights and liabilities of Charles and April?

d) 10 MARKS 15 MINUTES

Aunt Sophia wants to know whether she will lose her house to the Enterprise Bank. Advise her of her legal rights and remedies, if any.

9

Buz became a shareholder and director in Contractor Inc. and was given the position of business development manager to network and research business opportunities for the company. There were two other shareholders who were also the other directors, and an agreement amongst the three of them said: "No contract over \$10,000 can be signed without consent of all three directors."

Buz discovered and negotiated a deal to build a recreation centre for the municipality of Pemberton for \$2 million which he thought was a wonderful business opportunity, and signed a contract on behalf of Contractor Inc. without the approval of the others. Buz got a prepayment of \$20,000 from the municipality of Pemberton in the form of a cheque made out to Contractor Inc.

When Buz told the other two directors about the deal, they decided that they did not want to work in Pemberton and rejected it. Buz was so angry that instead of returning the cheque, on November 23 Buz took the cheque to Contractor Inc.'s bank, the Good Hope Bank, and gave it to the teller, who gave him \$20,000 cash in return. On November 20, hearing of Contractor Inc.'s refusal to do the work, the municipality of Pemberton stopped payment on the cheque.

a) 10 MARKS 15 MINUTES

Will Contractor Inc. be liable to the municipality of Pemberton for breach of contract?

b) 10 MARKS 15 MINUTES

Assume that Contractor inc. is not liable on the contract with the municipality of Pemberton. Will the Good Hope Bank succeed in collecting the \$20,000 from the municipality of Pemberton?

#10

In order to keep her large German Shepherd dog on her own property, Sally erected an electrified barrier around the front of her property. The barrier was almost invisible from the street. If the dog attempted to leave her property, a small shock would be triggered which deterred the dog from leaving. Since she had erected this fence, the dog had not left Sally's property without her consent.

Sally was in her front garden with her dog. Sally was gardening and the dog was sniffing about when Rachel came down the street on her bicycle. The dog started barking and lunged toward the electrified barrier, but was stopped and did not proceed off Sally's property. Rachel was startled, did not know there was a barricade, and swerved her bike into the path of an oncoming van. The van was driven by Todd who was driving at 60 km/hr, 10 km/hr over the speed limit. Todd was delivering organic produce for Wholesome Eating Inc. Wholesome Eating's van was damaged, Rachel's bike was destroyed, and Rachel was seriously injured. Rachel and Wholesome Eating Inc. are both seeking compensation for their damages. Whom would they likely sue? Assess their chances for success explaining the relevant law.

