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Has Stan breached the Contract?

UCC

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UCC governs the sale of goods.

Here, the sale of tomatoes to Best Sauce-Maker Company (Best) is for the sale of goods.

Therefore, this contract is governed by the UCC.

Modification

Under the UCC modification to a contract is permitted as long as it does not materially effect the original contract terms.

Here, Stan had agreed according to a valid written contract to sell his tomatoes to Best at 5,000 bushels on July 1, at \$100 per bushel, payable upon delivery. Stan sends an email stating that due to heavy rains the tomato ripening would be slow and his delivery would be late. Best relied, "Okay."

Therefore, we have a modification to the delivery terms, but it is not significant and does not materially effect the terms, so we still have a valid contract.

Anticipatory repudiation

Anticipatory repudiation is the unequivocal repudiation or revocation of a contract.

Here, on May 22 an employee of the Delta Bank (Delta) informed Best that rains had damaged Stan's tomato crops and that Stan would be unable to fulfill all his contracts. Best called Stan to verify the banker's comments. Stan answered, "Won't know until June 10 whether I'll have enough tomatoes for all my contracts." When Stan answered Best by stating he was unsure whether he would have enough tomatoes it raised uncertainty by Best that he would not be able to perform. However, Stan did not unequivocally state that he could not perform or that he was revoking his performance. Additionally, he did not state that even if he

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did not have enough tomatoes to perform all of his contracts that Best would be one of the contracts that he would not be able to supply tomatoes to.

Therefore, we still have a valid written contract.

### Adequate Assurances

A buyer may request adequate assurances from the seller when there is a possibility that they may not be able to perform or that they are not certain that they will be able to perform.

Here, Stan stated he was unsure if he had enough tomatoes to perform all of his contract. He stated that he would know by June 10th whether he would be able to supply all of his contracts, including Best's contract. Best, replied that they needed a firm commitment by May 27th, or they would buy their tomatoes some place else. Stan did not confirm and did not give an adequate assurance to Best by May 27th and as a result Best purchased their tomatoes from Agro-Farm. When a buyer requests adequate assurances that a party will be able to perform the contract and the seller does not answer this is considered anticipatory repudiation by the seller. Stan did not answer Best, and did not make any attempt to contact Best. Although, it can be argued by Stan that Best did not give adequate time to respond as he had already told Best that he would not know until June 10th whether he would be able to perform on the contract.

Therefore, Stan is repudiated the contract and is now in breach of the contract.

### Modification

Under the UCC modification to a contract is permitted as long as it does not materially effect the original contract terms.

Here, the terms of the contract were not modified as Stan still had until July 1 to deliver the tomatoes along with the additional two week extension.

Therefore, the conversations between Stan and Best regarding the performance were not a modification of the contract.

### Did Best breach the contract?

### Reasonable Time

Here, Best contracted with another company to buy the bushels of the tomatoes after Stan failed to give adequate assurances that he could perform on the contract. First, Stan informed Best that his delivery would be two weeks late and Best agreed with that modification, so there is not a breach at this point. Second, Best had learned from a mutual banker that Stan may not be able to perform. Stan stated that he would not know if he could perform until June 10th, Best replied that they need a firm commitment by May 27th. Stan did not respond, but he did respond by June 6th that he was about to deliver all the bushels and the original terms of the contract stated that he would deliver by July 1st. Additionally, the modification of the terms that both parties agree to gave Stan an additional two weeks to perform. Best stated to Stan on June 6th that they had already purchased the tomatoes from someone else and that he owed them \$50,000. It is not clear from the facts if Best notified Stan that they had already made other arrangements or that they were rescinding the contract. Stan could argue that this was a breach of the contract since he had until at least July 1st to perform and that he also notified Best that he would not know until June 10 whether he could perform and that he did not repudiate the contract.

Therefore, Stan may have a claim for breach of contract if it is found that he had to until July 1st to perform and that he did not repudiate the contract when he failed to respond to Best's adequate assurances and that Best responded reasonably to Stan's non-assurance by purchasing their bushels from another party.

### Damages

#### Compensatory Damages

##### Best's compensatory damages

Compensatory damages are damages that awarded to the non-breaching party to put them back in the position they were in before the breach.

Here, Best purchased the bushels from Agro-Farm for \$110 per bushel, instead of \$100 per bushel as stated in Stan and Best's contract. If Stan is found in breach he would be liable for the difference in price between the what he paid to Agro-Farm

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and what he would have been paid Stan which is \$10.00 more per bushel which adequates to \$50,000.00.

Stan's compensatory damages

Additionally, Stan was forced to sell his tomatoes to a different buyer if Best is found to be in breach of the contract they could be liable to Stan for the difference in sale to the other buyer which was \$95 per bushel versus the \$100 he would have received from Best.

Cover

When a non-breaching party has to receive their goods from another seller because the other party could not perform they have a responsibility to cover reasonably.

Here, Stan and Best both seemed to have covered reasonably as the prices they received or paid were not too excessive.

Duty to mitigate

Additionally, each party has a duty to mitigate their damages. This means they have avoid any excessive expenses to replace the product and get as close to the terms as possible. It also seems that Stan and Best have done this.

Question #1 Final Word Count = 1139

**END OF EXAM**

2)

Prop 8

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In California all evidence is admissible if it is relevant, and it does not fall under one of the exemptions: hearsay, character evidence, Duly prejudicial, etc.

The 911 Tape

A 911 Tape is considered non-testimonial statement and is admissible in California if it does not violate the Confrontation Clause in a criminal case.

Here, Deb is accused of battery against Vic. A 911 Tape is admitted into evidence of Vic reporting the incident. The 911 tape is relevant to the case as it shows that there was an actual battery that was reported by Vic and that Deb is the one who had beaten Deb. The parties have stipulated that Vic's statements were not covered in their stipulation. The tape was properly authenticated and met the foundation requirements.

Therefore, under Prop 8 the 911 tape would be admitted as relevant evidence, but the stipulation would not cover Vic's statements.

Sam's testimony

Character evidence is evidence offered to show that had a defendant had a propensity to act in conformity with his character when he committed the crime. In California character evidence is inadmissible unless it can come under an exception. Specific instances are not admissible in California.

Here, Sam is a ex live-in boyfriend of Debs. The prosecution has called Sam to the stand to testify that Sam had threatened to choke Sam and had beaten him on several occasions. Sam's testimony is being offered to show that Deb has a propensity to beat her live-in boyfriends, it also offered as a specific instance. It further may being offered to show that Deb beat Vic, because she has done this in the past. Additionally, from the facts it is not clear whether Deb was ever convicted of a crime in her beating of Sam. There is not an issue with disclosure to the other party as stated in the facts.

Therefore, the testimony of Sam is not admissible as it is character evidence.

Character Evidence Exceptions - Motive, Intent, Absence of Mistake, Identification and Common Plan

Character evidence in a criminal trial may be admitted if it is not offered to prove a person acted in propensity with his character to commit a crime.

Here, the prosecution could offer the testimony of Sam to show that Deb had intent or a common plan to beat Vic. But it would have to be under the Judge's discretion and the Judge would weigh whether the admittance his testimony would substantially outweigh the prejudicial effect on the jury.

The computer print-out.

Relevance

Prop 8

In California all evidence is admissible if it is relevant, and it does not fall under one of the exemptions: hearsay, character evidence, Duly prejudicial, etc.

Here, Deb is attempting to introduce evidence that she was working at her office 20 miles away at the time of the assault. She has laid a proper foundation as computer print outs are admissible if authenticated. It will be under the Judge's discretion to do this. The computer print outs would be relevant to show that Deb was not present at the time of the beating and can prove her innocence.

Personal Knowledge

Deb has personal knowledge of the records, as they were printed from her computer.

Therefore, the computer print-out is relevant evidence to show the whereabouts of Deb at the time of the beating and should be admissible.

Question #2 Final Word Count = 560

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**END OF EXAM**

3)

Ethical Violations of Lou

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Duty of Competence

Under the ABA and California laws an attorney owes a duty of competence to his clients.

Here, Lou has agreed to represent Betty and Sheila in criminal case. Lou is an estate planning attorney and has no experience in criminal law or defending anyone because he is an estate planning attorney. Lou has breached his duty of competence by agreeing to defend Betty and Sheila. Additionally, he was later relieved by the court because he was incompetent in criminal procedure. This indicates Lou has not informed nor educated himself of the applicable criminal law or made an effort to contact another attorney to advise him on the matter.

Therefore, under California and ABA law Lou has breached the duty of competence.

Duty of Confidentiality

Under ABA and California laws an attorney has a duty of confidentiality to his client.

Here, Lou is represented two defendants on the same exact matter. It does not state from the facts, but when representing two parties on the same matter you may be disclosing the confidences of another client to the other client. As long as both agree there may not be an issue, but when representing in trial there could be as to being able to adequately represent both.

Therefore, he breached his duty of confidentiality.

Conflict of Interest

Here, there may an additional conflict of interest if the parties representation becomes adverse. In California Lou would have to get a signed waiver as to the



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representation of both parties which states that they are willing to waive. Under the ABA authority an oral waiver to representation would be adequate.

### Duty of Fiduciary

A duty owes a fiduciary duty to his clients.

Here, Lou signed a retainer agreement with Shiela and Betty. Under California and ABA rules retainer agreements cannot be entered into on criminal cases especially one's that state provisions that base payment on a guaranteed outcome. In California the retainer agreement must also state what happens if the case is lost and how the attorney would be paid, plus any additional costs incurred with a break down and how they will be paid. Besides being in violation of the professional responsibility rules for entering into a retainer agreement, Lou has stated in the agreement he will notify the clients if there is a conflict of interest, but it does not state how he will do that.

Additionally, Lou asked Betty and Sheila for payment of \$2,000 for his services to be split up between them as they decided. He had entered into a invalid retainer agreement with them and then was relieved from the case by the Judge of his incompetence. Betty and Sheila may be about to sue Lou for breach of his fiduciary duties. In California he would have to participate in a fee dispute arbitration to try to resolve beforehand. The ABA does not have fee dispute arbitration.

### Duty of Candor

An attorney owes a duty of candor to the court.

Here, Lou went to court unprepared. He did not know the procedures or the apprise himself to the applicable law. He owes a duty of candor to the court, and it was obvious that he violated his duty as the court relieved him of counsel. Even though the facts do not discuss the court may obtain sanctions against him.

Therefore, he breached his duty of candor to the court.

### Duty of Fairness

An attorney owes a duty of fairness to other attorneys, the court and his clients.

Here, because Lou represented his client when he knew that he was not apprised of the applicable law. He additionally owed a duty of fairness to the other attorney, court and his clients. He violated that duty when represented a client that he could not defend adequately.

In conclusion, Lou has violated the ethical duties of competence, confidentiality, fiduciary, candor and fairness under the ABA and California rules of professional responsibility.

Question #3 Final Word Count = 659

**END OF EXAM**

4)



California is a community state. All assets acquired during marriage are presumed to be community property. All assets acquired before marriage or during separation are presumed to be separate property. Additionally, any assets acquired by will, devise or bequest are presumed to be separate property.

Townhouse

Assets purchased before the marriage are presumed to be separate property. Any community property assets that contribute to the separate property residence or asset can be reimbursed as to the down payment, interest and principal.

Here, Wilma purchased the townhouse before her and Harry were married. Property acquired prior to marriage is presumed to be separate property. She used the proceeds from her pension to make the down payment on the property and the property is titled in Wilma's name, the townhouse is Wilma's separate property. The pension is also Wilma's separate property as it was based on earnings before the marriage. During the marriage Harry used his earnings from his job at the store to pay the mortgage. Any earnings from a job acquired during marriage are considered community property, even though Harry had titled the bank account in his name alone because the earnings came from a community property asset it will still be considered a community property. The community is entitled to reimbursement from the separate property. Harry and Wilma were married at the time of Harry's contributions, so he will receive 1/2 of the reimbursement on the down payment (Wilma made the down payment from her separate property, so no reimbursement), interest and principal.

Therefore, Harry will receive 1/2 of the reimbursement to the community upon divorce and Wilma will receive the other half.

Motorboat

In California all assets acquired during marriage are presumed to be community property. Any property purchased with separate property funds is presumed to be separate property. Any earnings from a job during marriage are considered a

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community property asset.

### Tracing

A spouse can trace the property through accounts, deposits and such to determine if this a community or separate property asset.

### Transmutation

All property that is transferred from separate property to community property or the verse must be in writing, signed by the person whom it adversely affects.

Here, Harry and Wilma purchased a motorboat with Wilma's separate property funds (the bank account in which her pension goes into) and community property funds from Wilma's earnings as an accountant during the marriage, and titled the property in Wilma's name only. The funds in the bank account which are based on Wilma's earnings prior to marriage are her separate property, and the earnings from her accounting work are considered community property. Wilma has commingled her bank account with separate property and community property funds. Additionally, if there were any improvements made to the motorboat during the marriage from community property funds then the community property would be reimbursed. If Wilma claims the motorboat is her separate property she will have to trace where the assets came from to purchase the motorboat. There is not an agreement prior that stated that the motorboat was to be considered separate property. If Wilma can trace the funds to only the funds in the bank that were separate property to purchase it then it will be her separate property, but the burden is on her to prove this.

Therefore, if Wilma can trace the funds that she and Harry used to purchase the motorboat as coming from her separate property then it will be considered separate property of Wilma's, otherwise it will be considered community property.

### Personal Injury Settlement Funds

Under California law personal injury settlements are considered separate property funds.

Here, Harry was injured when a driver, negligently struck him with his car. It seemed

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from the facts that Harry was not the cause of the accident. Additionally, Harry and Wilma separated permanently after the settlement. We cannot determine from the facts if the Judge awarded the settlement proceeds to Harry, but it seems that might be an asset that would be part of the final order. It does not state that Harry was using the vehicle for the purpose of the community. Harry was the individual that was injured.

Therefore, Harry will receive the proceeds from the personal injury funds as his separate property.

Question #4 Final Word Count = 706

**END OF EXAM**

5)

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Justisability

In order to bring a suit against a governmental entity you must have standing and there must be a government actor. In order to bring a suit against a governmental entity you must have standing, a case in controversy (ripeness), and mootness (an action at all levels of the suit), no political question.

Here, State X is governmental actor. The case is ripe as to the Peter and the Corporation as the both affected economically as to the act.

Dormant Commerce Clause

The government is entitled to put Acts in place to protect the health, safety and welfare of the state, but they cannot unduly burden or discriminate against the people from other states. The exception is if the state is a market participant.

Here, State X purchased Railroad (RR) and the governor signed an Act that authorized the purchase of RR. The Act also stated that State X shall have first choice of space on RR. The State is acting as a market participant in purchasing RR and claims are raised by Peter and Corporation who are from State Y. When there are federal laws that conflict with state laws, the federal law preempts it. Since there may be discrimination to Peter and the Corporation who are both located in State Y and the restrictions placed on State Y by RR and State X unduly burden the stream of commerce an action will be brought in Federal Court under the Commerce Clause.

Commerce Clause

The Commerce Clause states that no Act can unduly burden the stream of commerce.

Here, State X has signed an Act that gives priority to manufactures of State X who use RR. As a result of the Act Peter has lost most of his customers from State X that purchased his melons because he cannot get them shipped in time and they ripen. Additionally, the Corporation has lost retail customers in State X that

purchase their refrigerators because they can no longer guarantee delivery.

Burden of Proof

The government is going to have to prove that the Act is necessary to achieve a compelling governmental interest.

Here, the Act was signed to allow State X to purchase RR. The governor in signing that Act provided that manufacturers with factories in State X shall have first choice of space shipping space on RR. There does not seem on its face to be a necessary means to achieve a compelling governmental interest or that this is the least restrictive means to accomplish it. It seems as though it might be discrimination on outsiders.

Therefore, the government cannot meet its burden of proof.

Peter, may be make a claim that the restrictions placed on State Y manufacturers unduly burdens the stream of commerce. The government cannot meet its burden as described above and so the court will likely rule that it is not a necessary means to achieve a governmental purpose and it is not narrowly tailored. He may also bring an action for violation of the Privileges and Immunities Clause as it puts a restriction on travel for out of state manufacturers. The corporation will not be able to bring a suite under P&I.

The Corporation will be able to bring an action that the restrictions placed on State Y manufacturers has unduly burdened the stream of commerce. The court will likely rule that the restrictions are Unconstitutional and that State X has not met its burden.

Question #5 Final Word Count = 571

**END OF EXAM**

6)

THE CONDUCT OF THE UNDERLYING PLEA DOES NOT JUSTIFY A FINDING OF MORAL TURPITUDE

Our client Abigail Watkins is before the Columbia State Bar in which a disciplinary action has been filed against her regarding a plea of guilty to a single felony count of insider trading that occurred more than two years ago. In reviewing the transcript of Abigail Watkins she stated in her testimony that she had contemplated purchasing the Fort stock in the past, but had never acted. Her underlying reason in purchasing the stock was that it was a good company that was doing well. She also stated in her testimony that her judgment impaired by the pills (Percocet and Ambien) that it was noticeable to herself and coworkers. She does not have any recollection of the transaction and she pled guilty because she believed the attorney Darmond would state those facts. Additionally, our client testified to SEC the same facts as stated as above and did not deviate from them.

In Chadwick (1989) the court that the acts of Mr. Chadwick in regard to a tender offer that he acted upon and received a profit. Distinguished from our case, Mr. Chadwick knew precisely what he was doing when he purchased the stock, he was fully aware and he admitted that he had done so. Chadwick (1989) states that for the Rules of Professional Responsibility escapes precise definition and that is generally described as any crime of misconduct without excuse. The Court held against Mr. Chadwick and that he had no excuse at the time that he purchased the stock except that his willingness to comply with the SEC should excuse his actions. Here, our client Abigail Watkins has stated that she was under extreme pain and on medication at the time of the purchase, she cannot recall the she even had a conversation with Ms. Darmond concerning the transaction or merger. She did not intentionally purchase the stock to deceive anyone she basically acted on a purchase that she had been wanting to do for a considerable amount of time.

It is for these reasons that the conduct of the underlying plea does no constitute a finding of moral turpitude.



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WATKINS TESTIMONY AT THE HEARING DOES NOT JUSTIFY A FINDING OF MORAL TURPITUDE

In Salas (2001) the court found that State Court's ruling did not support by clear and convincing evidence that the Respondent had testified falsely and hence was guilty of moral turpitude. The court also ruled that Mr. Salas honest lack of memory does not signal a lack of candor to the court. Our client stated at the hearing that her explanation of the plea was not a contradiction of the facts she states in the plea, but an explanation as to why this lapse in judgment could have occurred. She has never been disciplined prior to this incident.

In Chadwick (1989) the court that the acts of Mr. Chadwick in regard to a tender offer that he acted upon and received a profit. Distinguished from our case, Mr. Chadwick knew precisely what he was doing when he purchased the stock, he was fully aware and he admitted that he had done so. Chadwick (1989) states that for the Rules of Professional Responsibility escapes precise definition and that is generally described as any crime of misconduct without excuse. The Court held against Mr. Chadwick and that he has no excuse at the time that he purchased the stock.

Here, our client Abigail Watkins has stated that she was under extreme pain and on medication at the time of the purchase, she cannot recall the she even had a conversation with Ms. Darmond concerning the merger. She did not intentionally purchase to deceive anyone she basically acted on a purchase that she had been wanting to for a considerable amount of time. She has also stated to the court that her lapse in memory of the particular transaction does not make her guilty.

The court has not proven that by clear and convincing evidence that our client, Abigail Watkins intended to purchase the stock to deceive anyone or the SEC, she should not be charged with a moral turpitude violation if the court has not met their burden of proof by clear and convincing evidence.

Question #6 Final Word Count = 713

**END OF EXAM**