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### Question 3

#### 1. What claims does Tuan have against Leo?

Issue: Breach of Contract by Leo

Rules: UCC governs contracts for sale of goods over \$500k. In the event of a breach of contract, a plaintiff may sue for compensatory damages, which will be the difference between the contract price and the market price. In a sale of goods claim, plaintiff may also sue for incidental loss, eg cost of storage, transportation, etc. To prevail in a claim for damages, plaintiff must show that there was a breach by defendant, loss which is certain (not too speculative), the loss was foreseeable, the loss was unavoidable.

Analysis: Leo's loss was \$5000, ie the difference between the contract he had with Leo and the contract with Bruno, over the 10 years. This is a sum certain, and it was foreseeable that he would claim this in the event of a breach because he would have had to find an alternative. The loss was unavoidable, the facts state he needed to store his inventory. It is also likely he may have had some other incidental damages

Conclusion: T can sue for damages based on his loss over the 10 years

Was there a breach of T's quiet enjoyment of the property?

Rules: there is an implied warranty of quiet enjoyment as part of a landlord's duties. Tenant should be able to enjoy land without interference of another by landlord or paramount title holder.

Analysis: Annika's occupation constituted a breach of T's quiet enjoyment, and it prevented T from taking possession of the property as a whole. This was a breach of L's duties because she had a valid lease herself. Total eviction allows T to sue for damages based on loss of use of property.

Conclusion: T had a claim for loss of quiet enjoyment caused by A's occupation of the property

Issue: Did Leo's possession of 25% of the property constitute constructive eviction?

Rules: Where a tenant is only able to make use of part of the property this can constitute a constructive eviction where there is substantial interference with his right to use the property. In that case, the tenant may give notice to the landlord of his intent to terminate the lease, and vacate promptly thereafter.

Here, the facts state that when Tuan was able to take possession after Annika's exit, Leo had stored equipment in the warehouse making 25% of it unusable. The question is whether this constituted substantial interference. On the one hand, 25% seems like small amount, however, we are told T wanted to store his inventory, and it is likely he rented the property based on the size available. In which case, the interference would be substantial. Tuan did notify Leo, and promptly left, and therefore can sue for damages based on his loss of the lease.

Conclusion: T has a claim for constructive dismissal

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## 2. What claims does Tuan have against Annika?

Issue: Did Annika's occupation of the property constitute trespass?

Rules: A trespass is an intentional physical invasion of another's real property. Physical invasion is the presence on the real property. Intent is to be on the property, there is no need for the defendant to realise it would be trespass. Remedy for trespass can be damages or injunction. Damages are awarded based on whether it is a continuing trespass or a permanent trespass. A continuing trespass will lead to damages equivalent to market rental value of property, for permanent trespass, the measure of damages is the market value of the land. There must be no defenses available.

Analysis: Annika was physically on land to which Tuan had an interest. It is irrelevant that she didn't realise it was a trespass. However, Annika also had a valid lease with Leo,

## 3. What counterclaims does Leo have against Tuan?

Issue: Can Leo sue Tuan for non-payment of rent?

Rules: A claim for non-payment of rent will usually only give rise to a claim for damages by a landlord. However, most states will allow a landlord to seek eviction. Where a tenant has not paid rent, a Landlord may not take matters into his own hands with self help measures. Where it is a commercial lease, a landlord may place an equitable lien over personal items of a tenant in the premises. The defense of unclean hands may be asserted when the plaintiff has acted in a way that was dishonest, or brought about the claim, or was fraudulent, negligent etc

Analysis: Here, Tuan has already vacated the property, and so he doesn't need to try and evict him. Any claim for damages, however, will be limited because of Leo's breaches, see supra. In addition, T will have the benefit of the defense of unclean hands. Leo also mitigated his losses, which would also have reduced any claim he might have.

Conclusion: Although a landlord has a claim for damages against a tenant generally for non-payment of rent, although Leo can assert this claim, it is unlikely he will recover anything

Question #3 Final Word Count = 835

**END OF EXAM**