

### INSTRUCTIONS

You may use one bluebook if you write on both sides of the pages, or two bluebooks if you write on only one side (or every other line, or anything that adds up to one bluebook on both sides). If you type, make a good faith estimate of the equivalent. Please put answers in the bluebook; if you type, put the pages into the bluebook cover.

You may use any materials you wish, but nothing beyond the casebook, assigned cases, and class discussion is necessary.

### QUESTION 1

Dave was assisting Ann in replacing the brake shoes on Ann's truck. They were working inside Dave's garage because of rainy weather. They had difficulty removing some of the lug nuts from one of the wheels. Pat, a friend, had a welding torch and agreed to use it to help remove the nuts. She asked Dave whether there were any inflammable materials in the garage; Dave said there were none. Pat then applied the torch to one of the nuts. Sparks scattered on the garage floor and ignited a pan of flammable liquid under the truck approximately five to ten feet from where they were working. Dave picked up the pan and started for the open door, but dropped it due to the heat and inadvertently kicked it; the flammable liquid splashed onto Pat and ignited her clothes, causing burns.

Pat sued, alleging that Dave was negligent in failing to warn her of the presence of the flammable substance and in picking up the hot pan, dropping it, and kicking it. Dave's homeowner's insurer filed a declaratory judgment action, alleging no coverage because the policy excluded coverage of liability for injury arising out of the use of an automobile. The trial court gave judgment for the insurer. Dave appealed.

1. Argue the case for Dave.
2. Argue the case for the insurer.

## QUESTION 2

Silver Manufacturing Company sold to Best Company 5000 widgets and promised to deliver them by January 10; the contract did not specify the method or place of delivery. Silver had widgets stored in a warehouse; Best also had an account in that warehouse. Silver ordered the warehouse to transfer 5000 of Silver's widgets to Best's account and arranged for a trucking company to pick them up and deliver them to Best's plant on January 9. The warehouse sent to Best a negotiable document of title covering the goods; Best received it on January 7. On January 8 there was a fire in the warehouse and the widgets were damaged. Best refused to accept them and Silver filed a claim under his insurance policy. The insurer denied coverage on the ground that risk of loss had passed to Best, so Silver had no loss. Best then filed a claim under his insurance policy; his insurer also denied the claim, finding that risk of loss was still in Silver. When told that Best's insurer had denied the claim, Silver's insurer paid Silver and sued to recover the amount from Best's insurer. Decide the case.

The following sections of the Uniform Commercial Code are relevant:

Section 2-501. Insurable Interest in Goods

(1) The buyer obtains a special property and an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the goods so identified are non-conforming and he has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement identification occurs

- (a) when the contract is made if it is for the sale of goods already existing and identified;
- (b) if the contract is for the sale of future goods . . . , when goods are shipped, marked or otherwise designated by the seller as goods to which the contract refers;

(2) The seller retains an insurable interest in goods so long as title to or any security interest in the goods remains in him and where the identification is by the seller alone he may until default or insolvency or notification to the buyer that the identification is final substitute other goods for those identified.

(3) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.

Section 2-509. Risk of Loss in the Absence of Breach

(1) Where the contract requires or authorizes the seller to ship the goods by carrier

- (a) if it does not require him to deliver them at a

particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier . . .; but

- (b) if it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer

- (a) on his receipt of a negotiable document of title covering the goods; or
- (b) on acknowledgment by the bailee of the buyer's right to possession of the goods; or

. . . . .  
(3) In any case not within subsection (1) or (2), the risk of loss passes to the buyer on his receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(4) The provisions of this section are subject to contrary agreement of the parties . . . . .

### QUESTION 3

Buildrite Company contracted to construct an office building. It obtained builder's risk insurance from Acme Insurance Company; the policy provided property damage and liability insurance and designated "Buildrite Company and all subcontractors" as named insureds. Buildrite subcontracted with Protective Sprinkler Company for installation of a sprinkler system. The contract provided that Protective would "indemnify and save harmless the contractor against any loss, cause of injury, or damage to persons or property arising or resulting from the performance of this subcontract." Protective also agreed to procure liability insurance covering Buildrite.

Several months after the sprinkler system was installed, it developed a leak that caused extensive property damage. Buildrite filed a claim with Acme, which paid the claim. Acme then brought a subrogation action against Protective, asserting liability under the indemnity agreement because of negligence. The trial court granted a directed verdict to Protective. Acme appealed.

1. Argue the case for Acme.
2. Argue the case for Protective.

## QUESTION 4

Arthur owned a tract of land that was subject to an easement of access to an adjoining tract owned by Beth. The easement had existed for more than 20 years with no problems, but Beth began to plan a subdivision of her land into 15 building lots, causing Arthur to fear a greatly increased use of the easement. It was a lane 12 feet wide that was graveled, but not paved. Beth wanted to pave it; Arthur objected. Beth planned to use the lane for construction equipment while houses were built--a projected period of two years. The deed granting the easement provided a 12-foot easement for access, with no location or limitations specified.

When construction started, Arthur installed a locked gate across the lane and refused to give Beth a key. Beth sued for an injunction and for \$50,000 damages due to delay in construction.

Arthur had a liability insurance policy with Faithful Insurance Company that covered for bodily injury or property damage for which the insured is liable; the limits were \$100,000 per person and \$300,000 per occurrence. He also had an umbrella policy with Careful Insurance Company; it covered injury or damage for which the insured becomes legally liable in amounts above the limits of Faithful's primary liability policy, and amounts above a \$500 deductible for basic coverage--that is, coverage of kinds of damages not covered in the primary policy. Among the items in the basic coverage was "wrongful eviction." Among the exclusions in both policies was "injury expected or intended by the insured." Arthur tendered defense of Beth's suit to both insurers. Both refused to defend. Arthur brought a declaratory judgment action against both. The trial court directed a verdict for both insurers. Arthur appealed. Decide the appeal.