

Question One

Williams, Nelson & Cash

To: Junior Associate
From: Senior Partner
Re: Bradley Case

The CEO of one of our corporate clients has requested our advice on a personal matter, and the corporate client has given its permission for us to represent the CEO in this matter, as it does not involve any conflict of interest with the company. The CEO, Susan Bradley, and her husband, Mike Caulfield, are having a custom home constructed. The contract they signed contains a provision which states that delays are a normal part of construction projects and that the builder would not be liable for any delays.

The completion of the home in fact was delayed and the couple, having sold their present home, had to move into a hotel. (These folks have expensive tastes: the hotel costs \$300 a night and they've been there two months already. Moreover, their belongings are in storage which is costing another \$200 a month) This event marked a deterioration in their relationship with the builder. At some point before construction was completed, the couple discovered that the wall between the kitchen and one of the bathrooms was misplaced by two feet. The wall is not a load-bearing wall, but it does contain plumbing for both the kitchen and bath. The misplacing of the wall enlarged the kitchen and downsized the bathroom, which upsets them because they had planned down the road to add a sauna to the bathroom and now the room is too small to accommodate that.

They want the builder to tear down and replace the wall. Builder refuses, apparently because moving the wall would also involve replacing the tile floor in the bathroom (specially ordered tiles from Italy), the hardwood floor in the kitchen, and re-aligning exposed beams in the kitchen ceiling, as well as the alterations to the plumbing. The homeowners estimate that the total cost of replacing the wall should be no more than \$10,000, but the builder claims it would be more like three times that. The homeowners are currently refusing to pay the rest of the price and the builder is threatening to bring legal action. The total cost of the home is something like \$800,000 and the last \$160,000 of that has not yet been paid. I asked a local real estate broker whether the misplaced wall would affect the market value of the home and she said she doubted it would, as both rooms are usable in their current state and the total square footage is unaffected.

I've heard that the reason the builder is being obstinate about fixing the wall is that it has a large commitment to a commercial project that it is obligated to begin shortly and it needs to pull the crew off Susan Bradley's home in order to do that.

Please discuss whether the homeowners should pay the remaining moneys or whether they are within their rights not to pay. Also discuss any possible recovery in either event. Limit your analysis to two pages single-spaced, standard margins, 12 point font.

Question Two

Brubeck, Parker & Marsalis

To: Junior Associate
From: Senior Partner
Re: FSI Case

Farmers Supply, Inc. (FSI) operates a crop-dusting company. It was hired last year by Emmett Clark to spray fertilizer on his twenty acre alfalfa field. Prior to spraying the fertilizer on Clark's field, the plane had sprayed pesticide on another job. Apparently, the operator did not properly clean the apparatus after spraying the pesticide, with the consequence that pesticide residue in the tank mixed with the fertilizer and was sprayed on Clark's field. Not long after the alfalfa crop had been sprayed, Clark noticed that large swaths of the field were dying. Subsequent testing revealed that the fertilizer had been tainted with pesticide.

FSI immediately agreed to compensate Clark and paid him \$8,000 for the loss of the crop. It had Clark sign the following release:

I, Emmett Clark, hereby acknowledge the receipt of \$8,000 and in consideration thereof agree to release Farmers Supply, Inc., for any and all damages caused by the spraying of my twenty acres of alfalfa.

This year Clark planted beans in the twenty acre field. When the bean crop again began to die off, Clark again contacted FSI, but according to FSI this time the tests on the field were inconclusive as to any lingering presence of the pesticide. Clark then had the field tested himself and allegedly traces of the pesticide were found. FSI has refused any further compensation.

Clark has now filed suit against FSI. His complaint contains two counts, one for breach of contract and one for negligence. Clark's deposition has been taken and, in addition to the above facts, he alleges that before he signed the release, he expressed a concern about the effects of the pesticide on future crops, and that he was told not to worry, there should not be any further problems. According to Clark, the FSI representative stated they had to settle one year at a time, so this was just the settlement of that season's alfalfa crop, and that in the unlikely event a further problem arose, FSI would take care of him then.

Please analyze whether the release Clark signed is enforceable and whether it prevents him from suing us for any further damage to his twenty acre field. On its face, it sure seems to. I'm attaching a memo from Perry which you should treat as confidential but which you should also take into consideration in your analysis.

Limit your analysis to four pages single-spaced, standard margins, 12 point font.

Confidential Attorney/Client Work Product

To: Senior Partner
From: Perry Paralegal
Re: FSI Case

I'm still trying to identify who it was that allegedly told Clark that "if a further problem arose, FSI would take care of him." It's beginning to look like it was a manager who is no longer with the company. And no one is very forthcoming about why he left.

I have spoken with the chemist who performed the test on the bean crop which came back inconclusive for the presence of the pesticide. She stands by her test results, but she did say that it is very common for that particular pesticide to continue to affect a field for more than one season. In fact, the promotional materials from the pesticide manufacturer claim that, under ideal conditions, the pesticide can reduce growth (by which is meant in the typical case the growth of weeds, not crops, obviously) for five years after application. Ouch.

I also asked her whether this is commonly known in the crop-dusting industry, and she said yes. I then asked whether she thinks whoever it was that negotiated the release with Clark knew there was a good chance that the pesticide would affect future crops, and of course she said she didn't know for sure – but that anyone from FSI should have known that.

Question Three

Chopin, Schubert & Brahms

To: Junior Associate
From: Senior Partner
Re: Kiddie Kare

Kiddie Kare, as the name implies, is a day-care operation. The company currently operates two day-care centers and was planning on opening a third. They entered into a lease for the third center; the lease promised they could take occupancy on August 15th. They needed to do this in order to be able to be operating by the end of the vacation season in early September when people tend to need to have their day-care arrangements in place. Unfortunately, a tornado the first week in August took off the roof of the building and they were not able to occupy the building until mid-October. (I don't remember if you're from these parts or not, but you should know that tornadoes are extremely rare in this part of the country. This is the first one to hit the city in anyone's memory.)

Kiddie Kare has filed suit for breach of contract, and the building's owner has denied liability for due to an "act of god." The contract says nothing about who bears the risk of loss before the building is occupied, although it does require Kiddie Kare to obtain commercial tenant's insurance upon occupancy.

Apparently, one of KK's centers nets about \$500 a week, while the other nets about \$1500 a week. The first one is on the northern edge of town, while the second one is near to downtown. The new one is toward the south but about halfway between downtown and the suburbs. In the two months the new one has been open, it's only been breaking even. At the beginning of August, KK had about half of their places committed; in fact, they had to rent another space for two months so that they wouldn't lose those customers (at a total cost of \$3,000).

Under the lease, KK is obligated to pay rent of \$1000 a month, but they've been withholding rent for the past two months as a "self-help" remedy. This has caused the owner to file a countersuit for rent due.

I think I can settle this case, but I need to have a handle on best case/worst case scenarios so I know what are the possible dollar amounts involved. Please analyze the contracts issues. Limit your analysis to two pages single-spaced, standard margins, 12 point font.

End of Exam

Good luck with this and your future legal career.