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1. The issue is whether the wife will be able to establish her negligence claim by showing the farmer had a duty, breached it, and that his breach caused her damages.

To establish a negligence claim, the plaintiff must show the defendant had a duty to prevent harm, the defendant breached that duty, the breach was the actual and proximate cause of the plaintiff's damages, and that the plaintiff did in fact suffer damages. Generally, people have a duty to act as a prudent person would and reasonably avoid causing foreseeable harm to others. Breach occurs when the defendant fails to carry out this duty. Custom and typical trade practices, as well as following government regulations, may influence a judge or jury's decision about whether a defendant breached his or her duty, but these factors are not dispositive. Actual cause means the defendant's actions were a "but-for" cause of the plaintiff's damages; in other words, but for the defendant's actions and breach, the plaintiff would not have suffered injuries. Proximate cause refers to whether the injury was reasonably foreseeable. Damages include things like physical injury and property damage.

Here, the wife must show the farmer had a duty to her. All people have a duty to act reasonably to not cause others foreseeable harm, and here the farmer was handling a potentially dangerous pesticide and was presumably aware he had neighbors. He therefore had a duty to act as a prudent person would to prevent harm from his farming operations and pesticide use.

The wife must also show the farmer breached his duty to her. The wife will argue that the farmer breached this duty by using a chemical that some scientists believe causes cancer, that is "highly toxic," and that causes serious respiratory problems with even "slight exposure." However, the farmer will argue that he followed state A regulations by attending the seminar and applying GS gas to his fields in accordance with those recommendations. He may also argue that he only applied GS at the beginning of two planting seasons, indicating he was not excessively using the dangerous pesticide. Further, he may claim he complied with custom in the county by using the pesticide in the way others were. These factors are not dispositive, but generally these factors weigh in favor of a finding that the farmer acted as a reasonably prudent person would when handling a dangerous pesticide. Therefore, the wife likely cannot establish breach.

If a judge or jury disagrees and finds breach, the wife still needs to establish actual and proximate cause. This can be difficult with toxic substance torts. Actual cause will be established if "but-for" the farmer's use of the chemical, the wife would not have gotten cancer. This is difficult for the wife to prove because although "some" scientists believe GS gas causes cancer, no study has definitely linked the pesticide and cancer in humans. The fact that the wife believes the chemical caused her cancer is not sufficient. Further, cancer rates in the county are consistent with the state result. In short, actual cause likely has not been established.

Proximate cause asks whether the injury was reasonably foreseeable. Here, it likely was because it is foreseeable that using a chemical known to have certain dangerous health effects (e.g. respiratory issues) and that is highly toxic may result in other types of currently unknown health effects. Futher, the pesticide is a gas that rises into the air, and so it is foreseeable that the farmers use could affect his neighbors who are adjacent to the farmer's fields.

The woman can establish damages because she was diagnosed with cancer which is a serious personal harm and she has likely also incurred medical expenses.

In conclusion, the woman will likely be unable to establish negligence because she cannot establish breach or actual cause.

2. The issue is what the husband must prove to establish his trespass claim, and whether he will succeed in establishing this claim.

Trespass is a knowing intentional physical invasion onto the lands of another person without permission that causes actual damages. The only intent required is intent to trespass onto the land; intent to cause injury or damages is not required. Generally, trespass must be a physical encroachment (e.g. not noise or smell).

Here, the farmer used the pesticide and, after attending the safety seminar, likely was aware that the pesticide rises from the soil to the air in gas form and therefore can travel to neighboring properties. Thus, the farmer likely had "intent" (under the substantial knowledge theory) and knew the pesticide would travel to his neighbors. Further the husband will have an easier time than his wife establishing causation and actual damages because it is known that "even slight exposure can cause serious respiratory problems" and the husband suffered these respiratory problems only during the planting season. In addition he had lived on the land for many years without these medical issues, suggesting they arose only after use of the pesticide. However, courts almost never enforce trespass unless it is clearly a *physical intrusion*. Here, the husband can argue the gas is a physical substance that entered his land, unlike noise or light which are more intangible.

As a result, the husband likely can show the farmer trespassed.

3. The issue is whether the court is likely to issue a permanent injunction to enjoin the farmer from using GS within one mile of the couple's house if the court finds the husband prevailed on his trespass suit.

Courts will grant a permanent injunction only if there is an irreparable harm that cannot be otherwise prevented, and the injunction is in the interest of public policy.

Here, there is likely irreparable harm due to the pesticide causing severe respiratory issues, because the pesticide can cause such issues even with slight exposure. Although the husband could take precautionary measures like wearing a mask or using an air filtration system, this would not necessary protect him since he only needs to be exposed to a small amount of gas. However, public policy likely does not weigh in favor of the injunction. The state already considered a ban and then lifted it only in this specific county. They considered factors like the need to grow the county's traditional crops, the lack of an appropriate substitute pesticide, the lack of viable substitute crops, and the huge $500 million annual cost of banning GS gas. Because public policy weighs in favor of allowing regulated use of the pesticide, the court is not likely to grant a permanent injunction.

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1. The woman likely will not prevail in negligence because there is no evidence in the facts that show the farmer breached his duty of care while using the GS pesticide.

According to the 2nd restatement of Tort To establish a negligence claim in Tort the wife must prove the 1.) farmer owed her a duty of care 2.) The Farmer breached that duty of care, 3.)the farmer's actions were the actual and proximate cause of her injury, 4.) The farmers negligent actions resulted in cognizable damages to the wife.

1.) Here the farm owner is a professional farmer and owes his surrounding neighbors the duty of care to act as a reasonable farm owner would with similar skill level according to local customs. Here, part of those duties would be knowledge of the risks involved with GS pesticide toxicity. what the "safe exposure limit is" attending the health departments safety seminar and understanding the instruction of prudent application of GS. 2.) The farmer has attended the health department's safety presentation and has applies GS according to their instructions. There is nothing in the facts that infer the farmer was negligent or reckless in his use of GS or his choice to use GS after the ban was lifted. 3.) Several studies have linked GS exposure to mice but no study has definitively linked GS exposure to cancer in humans so the farmer could not reasonably foresee that his neighbor was at risk to contract cancer as a result of his use of the GS pesticide. Additionally the facts state that Gs is toxic in a confined area for a two week period, the neighbors live a mile down the road so it would be difficult to prove the GS gas was the actual cause of her Cancer. 4.) The wife's Cancer is considered as damages and the costs associated with her medical treatment, pain and suffering, loss of quality of life would be recoverable as damages if the farmer is found to have been negligent.

The woman will not succeed in her negligence came because there is no evidence that the farmer breached his duty of care as a professional while using the GS pesticide. The woman will argue that her symptoms and possibly diagnosis began during the planting season and point to the previous ban on the chemical and that it has only bee allowed to be introduced for financial motives. However, even if she is correct farmer will argue that he did not use GS during the ban and only used it since the ban was lifted following all guidelines and therefore is not in breach even if there is causation. Therefore the woman likely will not prevail in a negligence claim against the farmer

2.

The farmer will not likely prevail in a trespass claim against the farmer because he cannot show how the farmer's use of the GS pesticide is trespassing on his land and interfering with his use and enjoyment. According to the 2nd restatement in tort to establish a commercial trespass claim for chemical pollution the plaintiff must establish that the neighboring facility produced a waste material that interferes with the use of his property. Here the Husband will argue that the GS chemical leaving the soil interferes with the use and enjoyment of his property. There is nothing in the facts that state there is a smell or smoke associated with GS pesticide during the two week planting period so it will be difficult for the husband to prove GS is trespassing his land as it travels through the air. Therefore the Husband likely will not prevail in a trespass claim against the farmer.

3. Assuming the husband prevails then the court would likely not enjoin the farmer from using GS within one mile from the land. In tort a enjoinment is an injunction that would prevent the

farmer from using GS. Here the Husband and wife rent and do not own the property adjacent to the farm so it would be relatively easy for them to move compared to the burden imposed on the farmer who owns the land adjacent and is using the land to benefit the local economy which has sufferd losses of $550 M annually. Additionally, the period of risk associated with GS is only two weeks. Therefore it is not likely the court would enjoin the farmer from using the GS gas

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1. The issue is whether Parent and Sub are partners.

When two or more natural people or corporate entities agree to operate a for-profit business together and share the profits, the parties form a partnership. When a partnership exists, the entities which own the partnership, its partners, are each personally liable for the obligations of the partnership.

Here, VanCo would attempt to argue that Parent and Sub formed a partnership and that Parent is therefore personally liable for that partnership's obligations. However, Parent likely can prove that no such partnership was formed. While a local newspaper has previously characterized Parent and Sub as partners promoting business sustainability, the public's perception of a partnership relationship is not dispositive. The only proper inquiry is whether the entities intended to operate a for-profit business together and to share those profits. The evidence provided here is likely insufficient to establish that Parent and Sub intended to act in such a manner. While Parent collects recycled plastic and sells that plastic to Sub, it does so at market prices. Sub then uses that plastic to make shoes, which is not at all the same business as collecting recycled plastic. The relationship between Parent and Sub is much closer to a supplier and purchaser rather than business partners. Further, while Sub makes distributions of its profits to Parent, these distributions are normal practice for an LLC. These distributions likely do not qualify as profit-sharing, especially since there is no explicit profit-sharing agreement between Parent and Sub for Sub's business. As such, Parent is likely not liable for Sub's debts on a partnership theory.

2. The issue is whether Parent's manager's signature on a contract between Sub and VanCo bound Parent.

A manager of an LLC acts as an agent of that LLC. An agent may bind its principal to contracts when it acts for the benefit of the principal with either actual or apparent authority. Actual authority exists when a principal either explicitly directs an agent to act in a certain way (express authority) or the agent has reasonable cause to believe that its actions are authorized by the principal (implied authority). An agent acts with apparent authority when the representations made by the principal to a third party cause that third party to reasonably believe that the agent has authority to bind the principal.

Here, there are no facts that suggest that Greta, Parent's manager, acted with either actual or apparent authority from Parent. No fact suggests that Parent gave Greta the authority to bind Parent to the contract between Sub and VanCo. Nor does any fact suggest that Greta regularly signed such contracts between Sub and third parties on Parent's behalf, so Greta was likely not acting with implied authority, either. Nor did Parent make any representations to or have any communication with VanCo such that it would be reasonable for VanCo to believe that Greta had the authority to bind Parent. In fact, Greta never disclosed to VanCo that she was employed by Parent, not sub, and she signed the contract "as agent of Sub." Thus, it was not reasonable for VanCo to expect that Greta acted on behalf of Parent, and Greta therefore did not have apparent authority. While the actions taken by Greta and Sub's manager suggest that she had both express and apparent authority to act on behalf of *Sub*, no facts suggest that Greta had the authority to act on behalf of *Parent*. Thus, Parent is likely not liable to VanCo because Greta signed the agreement between VanCo and Sub.

3. The issue is whether the court should pierce the corporate veil with respect to Sub and hold Parent liable for Sub's obligations.

Typically, LLCs exist to shield their members from personal liability. However, a court may "pierce the corporate veil" and hold the members of an LLC personally liable for that LLC's obligations when the LLC and its members are so intertwined that failing to pierce the corporate veil would be unjust. In deciding whether to pierce the corporate veil, the court will evaluate factors such as the degree of control exercised over the LLC by its members, the extent to which the assets of the LLC and its members are intertwined, and the level to which the LLC is under-capitalized, among others.

Here, while Parent is the sole member of Sub and selects Sub's manager, such a degree of control by a sole member over an LLC is not unusual. Neither is Sub under-capitalized - the facts suggest that Sub has experienced financial difficulty as a result of the downturn in the shoe market, not because it was insufficiently capitalized. And some facts suggest that Sub was financially independent of Parent. Sub was a separate company operating its own business, and there are no facts suggesting that Parent regularly provided funding to Sub. Nevertheless, some factors do suggest that Parent and Sub were financially intertwined. Parent, not Sub, generally had control over Sub's distributions to Parent. Further, Parent and Sub share personnel for human resources, accounting, and government relations. Parent's technical experts regularly work with Sub in designing and testing new processes for using recycled plastic with no agreement in place to split costs for any of these services between Parent and Sub. Based on this level of intertwining of officers, and, to some extent, finances, a court may decide that piercing the corporate veil and holding Parent liable for Sub's obligations is appropriate.

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1) The issue is whether Parent LLC and Sub LLC formed a general partnership.

Members of LLCs enjoy limited liability for liaiblities of the entity while partners in a general partnership have unlimited liability for partnership obligations. A partnership does not need to be formally created and occurs automatically when two or more persons or entities have the specific intent to engage in a for profit business as co-owners. While the sharing of profits is presumptive evidence of the existence of a partnership, close associations between entities in a corporate family alone will not create a general partnership between those entities without an agreement between the entities to share in profits.

Here, Parent LLC and Sub LLC work closely together and share costs on research and development to achieve a business objective of selling shoes. However, Parent is the owner of Sub and does not share in profits with sub but is rather entitled to the entire value of Sub's business. Further, Parent sells raw materials at fair market value to Sub indicating a desire for both companies to engage in a collective line of business, rather than share in profits. Since Parent is in the business of selling raw materials and owning Sub, Sub is in the business of selling upscale shoes, and neither shares profits (despite the agreement regarding the distributions of 100% of the profits to Parent), Parent and Sub will not be found to be partners in a general partnership despite news coverage promoting the companies a "partners" in sustainability. Since Parent LLC and Sub LLC are not general partners, parent cannot be held liable to VanCo as a partner of Sub LLC.

2) The issue is whether Greta was acting as an agent for Parent, Sub, or both when she signed the agreement with VanCo.

An agency relationship is created when a principal 1) manifests agreement with an agent 2) that the agent will act for the benefit of the principal, 3) subject to the control of the principal. A principal is liable for contracts entered into by an agent with authority. An agent can be a general agent with authority to act on behalf of the principal for all purposes or a special agent only authorized to act in certain ways on certain matters. An agent has actual authority to accomplish the expressly stated purposes of the principal. In addition, if a principal manifests to a third party that the agent has authority, the agent will have apparent authority and can still bind the principal even in absence of actual authority.

Here, Greta is the manager of Parent LLC, making her Parent's general agent because she 1)has an agreement with Parent, 2) to act on Parent's behalf and for its benefit, and 3)Parent has control through its employment of Greta. The manager of Sub also 1) came to an agreement with Greta, 2) that Greta would act for Sub's benefit for the limited purpose of signing the agreement with VanCo, and 3) Sub's manager is exercising control on behalf of Sub.

While Greta is a general agent of Parent and only a special agent of Sub, she had no actual authority to act on behalf of Parent because Parent never wished or instructed her to bind Parent in contract with VanCo. Greta was also not acting with apparent authority because Parent did not make any manifestations of Greta's authority to bind Parent LLC to the agreement with VanCo and Greta specifically noted on the contract that she was signed as an agent of Sub LLC. Since the thrid party to the contract believed it was communicating with an agent of Sub and Greta only had actual authority to bind Sub as SUb's agent, only sub will be liable to VanCo under a theory of agency.

3) The issue is whether a court will pierce the veil of Sub and allow VanCo to seek satisfaction of Sub LLC's obligations from Parent.

While the owners of limited liability entities such as LLCs generally enjoy limited liability, a court will pierce the corporate veil when 1) corporate formalities are disregarded such that an entity is functioning as the alter-ego of its owner and 2) injustice would result from failure to pierce the corporate veil. Courts are more likely to pierce the corporate veil in cases of fraud or tort than in contract because the party to a contract often is aware of the counterparty with which it is engaging.

Here, many corporate formalities have been disregarded. Sub is owned entirely by Parent, who appoints Sub's sole manager, the LLCs work closely together without explicit cost sharing arrangements, and have overlapping human resources accounting, and government relations personnel. Further, Sub can call upon the employees of Parent such as Greta to perform tasks for Sub's benefit. However, even if VanCo could establish that Sub is an alter-ego of parent, VanCo knew it was contracting with Sub and could only look to Sub for satisfaction of its contractual obligations. SInce this is not a case of fraud or tort, a court is unlikely to find that the viel should be breached because there is no injustice.

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Terminating with Daughters Consent

Under the rules set forth in State A's trust code, if the daughter agrees to the termination of the trust and the purchase of annuity A, for Betty's Benefit, the court may authorize the trustee to terminate the trust and purchase the Annuity.

State A's Trust code section one allows a trust to be terminated with the consent of all the beneficiaries, as long as the continuance of the trust is not necessary to achieve any material purpose of the trust. In order to assess whether this trust can be terminated by consent we must assess the purposes of the trust.

Potential Material Purposes

Here, the testator of the Trust, Tom explicitly stated that the primary purpose of his trust is to provide for his wife Betty for the rest of her life. The specific ways in which he outlined the trust payments reflected that purpose and were his best efforts to ensure that Betty was provided for. This is Toms Intended primary purpose.

Section three of the trust bequeaths the remainder of the trust to Sally after Betty's death. This does not seem to be a primary purpose of the trust, it is specified that this is intended to ensure the money doesn't automatically go to the state, as Tom has no other relatives. Because most of the money would be used for Betty's care, and keeping the money from the state was not Tom's primary purpose, this is likely not a material purpose that would prevent terminating with consent.

Section 4 of the trust includes a spendthrift provision that prevents any beneficiary from alienating or assigning their shares. The trust code of State A states that spend thrift positions are not presumed to constitute a material purpose of the trust.

Because Tom's trust's material purpose was to provide for Betty, and both parties consented the court may authorize the trustee to terminate the trust and purchase annuity A. The plan to terminate and buy Annuity A is designed to provide for Betty in the wake of increased expenses that make her care unsustainable under the current plan. Due to the changes in circumstances with Betty's health, the trust is actually hindering its material purpose. Because section 1 of the Trust code allows termination with all parties consent, and continuation of the trust is not necessary to continue the material purpose of caring for Betty, the court could terminate with all parties consent.

Terminating Without Daughters Consent

The court can terminate the trust without the daughters consent, and allow the testator to purchase annuity B.

Section three of state A's trust code allows the court to terminate a trust without the consent of

all parties if (1) the trust could have been terminated with if all parties had consented, and (2) the non consenting beneficiaries interests can be protected in accordance with the testators probable intention.

Looking to factor 1, as discussed above the trust can be terminated with consent as long as it is not necessary to achieve a material purpose. As discussed above the trust is no longer serving the material purpose of providing for Betty, and therefore could be terminated if all parties had consented. This factor of Trust Code section 4 is satisfied.

Looking for factor 2, the trust can only be terminated against the daughters wishes if her interests can be protected in accordance with the testators probable intention. Here, Tom did not have any intentions for his daughters interests. They were estranged and he expressed his reluctance to leave her any of his estate in section 3 of the trust. Therefore, there are no interests of the daughters that must be protected based on Tom's intentions. Additionally buying Annuity B will still provide the daughter with a cash payout, although it will be less than the original trust would have left. Toms original intentions of providing for Betty and leaving the remainder have been satisfied.

Because the Annuity B option does not violate Section 4 of the Trust code the Trust can be terminated, and used to purchase Annuity B without the daughters consent. Looking to the probable intentions of Tom, he would likely support this option.

Increasing Betty's Trust Income to 100%

The court could authorize the trustee to pay 100% of the Trust income to Betty without the daughters intent. Section 5 of the Trust code allows a court to modify the dis positive terms of the trust because of circumstances not anticipated by the testator, if modification will further the primary purpose of the trust. The testators probable intention must be considered. Here, Betty's poor health is an unexpected circumstance. Tom's intentions of providing for Betty, as the primary purpose of the trust are clear, and this modification would further the primary purpose. This seems to be in keeping with Tom's stated intentions in the Trust.

Looking to State A's trust code consent is not required for section 5 modifications so the daughters lack of consent is not a barrier here.

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Trust

1. Authorize to terminate Trust and invest in Annuity A

Yes, a court may authorize the trustee to terminate the trust and invest the proceeds in Annuity A. the issue is whether the trust is not necessary to achieve any material purpose of the trust. Under the laws of State A, a court may terminate authorize a trustee to terminate a trust with consent of all of its beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. The trustee must then distribute the trust proceeds as agreed by all beneficiaries. One type of trust is a support trust which exists to support a beneficiary, typically supporting that person to continue in their current standard of living. Here, Tom created a support trust for Betty. This is evidenced by the first provision which states that he created the trust to ensure that there will be sufficient funds to care for Betty for the rest of her life. This appears to be the only material purpose of the trust, since the trust only leaves a residuary to the daughter as a formality. Being a spendthrift trust is also not a material purpose, as stated by State A's laws. Now that Betty's expenses have increased dramatically, the trust is no longer necessary to support her since it is actually preventing her from being supported. The current payouts of the trust are inadequate to keep Betty in her nursing home. Since the trust cannot achieve its purpose of supporting Betty in her current standard of living, it can be terminated with consent of all beneficiaries. If Betty and Daughter agree on using the proceeds to invest in Annuity A, then the trustee must distribute the proceeds accordingly. Thus, a court may authorize a trustee to terminate the trust and invest in Annuity A.

2. Authorize to terminate Trust and invest in Annuity B

Yes, a court may authorize the trustee to terminate the trust and invest the proceeds in Annuity B. The issue is whether terminating the trust and investing in Annuity B is in accordance with the testator's probable intention regarding Daughter's interest in the trust. A support trust is explained above. Under the laws of State A, a court may terminate a trust without the consent of all beneficiaries if the court is satisfied that the trust is no loner necessary to achieve any material purpose of the trust, and the interest of a beneficiary who does not consent can still be appropriately protected in accordance with the testator's probable intention. As explained above, the trust no longer serves any material purpose since it cannot support Betty's standard of living, and that is the only material purpose of the trust. If Daughter does not consent to termination, the trust can still be terminated if interest in the trust can still be protected in accordance with the testator's probable intention. It appears that Tom had no intention of protecting Daughter's interest at all. He only included her in the trust as a formality. The overall trust clearly shows that it values Betty's interest over Daughter's. Tom would certainly intend, based on the trust language, to sacrifice Daughter's interest to support Betty. So purchasing Annuity B, even though it pays much less to daughter, is still in accordance with Tom's intent, since it allows Betty to remain supported in her current standard of living. Thus, a court may authorize the trustee to terminate the trust and invest the proceeds in Annuity B without Daughter's consent.

3. Modification of Trust

Yes, a court may authorize the modification of the trust to allow the trustee to pay 100% of the

trust income to Betty. The issue is whether circumstances not anticiapted by Tom arose, and whether paying 100% of the trust furthers the trust's primary interest. The laws of State A allow a court to modify the dispositive terms of a trust if there are unanticipated circumstances by the testator, and modifying the trust furthers the trusts primary interest. Again, the tetator's intent is the touchstone of this analysis. Here, there are circumstances Tom did not anticipate. He did not anticipate Betty's expenses increasing so dramatically, as the facts tell us. Next, Modifying the trust would serve the trust's primary purpsoe. Again, this is a support trust, the primary purpose of which is to support Betty in the standard of living she is accustomed to. Modifying the trust to pay 100% of the proceeds instead of 80% would allow Betty to remain in her current nursing home for the time being, upholding her current standard of living. Tom would certainly intend to allow this modification, since he clearly loved his wife very much and only thought of his Daguhter as an after though. So depriving he Daughter of trust proceeds does not violate his intent. Thus, a court may authorize the modificaiton of the trust to pay 100% of the turst income to Betty.

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1. Tech did not properly raise the statute of limitations defense

The issue is whether the affirmative defense pertaining to statute of limitations running is properly raised on a motion for summary judgment.

A statute of limitations defense is an affirmative defense. An affirmative defense is a defense in which a defendant asserts that even if it did take the action that it is being accused of having taken, it cannot be held liable in a court for taking that action because the time for pursuing such a claim has passed. All statute of limitations defenses must be raised in a party's first responsive motion or pleading to the complaint, either on a motion to dismiss (motion) or as an affirmative defense as part of its answer (pleading). If the affirmative defense is not raised this way, it is waived.

Here, Tech filed an answer to the complaint. It did not raise the issue of statute of limitations in its answer. One month after filing its answer, Tech filed a motion for summary judgment in which it asserted its statute of limitations defense as one of the grounds.

Tech did not properly raise the statute of limitations defense.

2. The court should deny the summary-judgment motions.

The issue is whether there is a material dispute of fact such that summary judgment would be improper.

The rule is that if a party files a motion for summary judgment, a court may grant summary judgment if, viewing the evidence in the light most favorable to the non-moving party, there is no dispute of material fact. A dispute of material fact is a dispute regarding facts that either go to an element of a claim or an element of a defense. If one party provides evidence as to an element and the other party does not dispute that party's evidence (by providing contrary evidence or otherwise), summary judgment is likely proper. On a motion for summary judgment, a court is not to weigh the evidence, but rather is just to determine if any dispute of material fact exists at all. A motion for summary judgment can be raised after the pleadings, and each party can (but need not) provide evidence such as affidavits and deposition testimony that the court will consider (they will be considered evidence because they are sworn/attested to).

Here, both parties have moved for summary judgment in some capacity. Tech moved for summary judgment on the breach of contract claim (and its statute of limitations argument), and Diner made a cross motion for partial summary judgment on the issue of contract breach. Tech supported its motion with an affidavit from its company president who asserted that the voice-recognition software would cover only combination meals identified by number. Diner supported its motion with the deposition testimony of eight witnesses to the agreement who testified that they were present when the contract was entered into and that the agreement was that the

voice-recognition system would cover all menu items.

Though Diner provided more evidence, the court does not weigh the evidence at this stage, and both parties provided conflicting evidence on the point of what the voice recognition software was supposed to cover. Furthermore, what the voice recognition software was supposed to cover is a material fact because if it was supposed to cover all menu items then Tech was in breach but if it was supposed to cover only combination meals identified by number (which is all that it does) then Tech was not in breach.

Because there is a dispute of material fact and both parties have provided evidence in support of their version of the material fact summary judgment is not proper for either party.

3. The court should dismiss the claim for lack of subject matter jurisdiction

The issue is whether the court has subject matter jurisdiction over this action.

A federal court may not hear a claim if it does not have subject matter jurisdiction over the claim. The issue of lack of subject matter jurisdiction may be raised at any time and by any party, or by the court sua sponte. If a court lacks jurisdiction over a claim then it would be issuing only an advisory opinion as to that claim if it heard and decided the claim and courts may not issue advisory opinions, thus this issue is critical. Federal courts are courts of limited jurisdiction and thus have subject matter jurisdiction over only certain types of claims, specifically: (1) claims that raise issues of federal law (federal question jurisdiction), and (2) claims over which the court properly has diversity jurisdiction. A federal question case is a case in which the claim raises a federal question on the face of the well-pleaded complaint. That is not the type of claim at issue here. A diversity case is one in which all plaintiffs are diverse from all defendants and there is more than $75,000 as the amount in controversy based on the plaintiff's good faith allegations. For parties to be diverse from one another they must have completely different domiciles. A corporation typically has two states in which it is domiciled - the state in which it is incorporated, and the state in which it has its principal place of business.

Here, Diner is the plaintiff and Tech is the defendant. Diner asserts that this claim is being brought pursuant to the court's diversity jurisdiction, and that there is $125,000 in controversy here because that is what Diner paid Tech for the software. But the problem here is domicile - Diner is incorporated in State C but has its principal place of business in State A, and Tech is incorporated in State D and has its principal place of business in State A. Thus, though they have different states of incorporation, they share a state of principal place of business, and are not diverse from one another.

Because the parties are not diverse, the court does not have subject matter jurisdiction over this claim. Because neither party has yet raised the issue and a federal court cannot hear a claim over which it does not have subject matter jurisdiction, the court should raise this issue on its own initiative and dismiss the claim.

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1. The issue is whether Tech waived the statute of limitations defense by failing to plead it in its answer.

A defendant is required to raise all affirmative defenses in its answer. If it fails to do so, it waives those defenses. Statute of limitations is an affirmative defense subject to this pleading requirement.

Here, Tech failed to include the statute of limitations defense in its answer. At that point, Tech waived the statute of limitations defense. Therefore, Tech's Motion for Summary Judgment (MSJ) did not properly raise the statute of limitations defense.

2. The issue is whether Tech's lone self-serving affidavit from its president is sufficient to create a genuine dispute of material fact where it is contradicted by deposition testimony of eight witness, including two Tech employees.

A court should grant a motion for summary judgment where there is no genuine dispute of material fact, and taking all reasonable inferences in favor of the nonmoving party, the moving party is entitled to judgment as a matter of law. A fact is material if it affects the outcome of the case. In doing this analysis, the court is not permitted to weigh the credibility of competing evidence. If there is competing testimony on a material issue, summary judgment is inappropriate. That is even so where one side's testimony appears far more credible than the other's.

Here, Tech's admission of Paragraph 5 of the Complaint only establishes the substance of Tech's performance: that Tech delivered software only capable of recognizing combination meat orders. It does not establish what performance Tech agreed to in forming the contract. Tech submitted one affidavit attesting that the companies' presidents agreed for Tech to create voice recognition software limited to recognizing combination meals. Diner's cross-motion submitted eight affidavits, including two from Tech employees, stating that Tech's president agreed to create a voice recognition system that would "cover all menu items." While Diner's evidence is more persuasive, that is irrelevant. Because there is conflicting testimony on a material fact, summary judgment is inappropriate and the court must deny both Tech's and Diner's Motions for Summary Judgment with respect to the issue of Tech's alleged contractual breach.

3. The issue is whether the court should dismiss the action for lack of subject matter jurisdiction.

Federal courts are courts of limited jurisdiction. A court may dismiss an action for lack of subject matter jurisdiction at any time, whether sua sponte or raised by the parties. Generally, federal court jurisdiction is limited to federal question jurisdiction and diversity jurisdiction. Federal question jurisdiction exists when the plaintiff's claim is based on federal law. Diversity jurisdiction exists when the plaintiff and defendant are citizens of different states and the amount in controversy exceeds $75,000. For diversity purposes, corporations are considered to be citizens of their state of incorporation as well as the state of their principal place of business.

Here, the breach of contract claims are based in state law, so the court only has subject matter jurisdiction if the requirements of diversity jurisidciotn are met. Diner Inc's claim is based on a material breach of a $125000 contract, for which it may be entitled to the full amount paid (as it received no financila benefit from Tech's partial performance). Therefore, the amount in controversey requirement is met.

However, the parties lack complete diversity. Diner Inc. is incorporated in State C and has its principal place of business in state A. Therefore, it's a citizen of State C and State A for diveristy purposes. Tech is incorporated in State D and has its principal place of business in State A. Therefore, it's a citizen of State D and State A for diversity purposes. Because both Tech and Diner are citizens of State A, the parties lack diversity and the court must dismiss teh action for lack of subject matter jurisdiction.

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The first issue is whether Supplier has an enforceable interest in the machine.

Article 9 governs security interests between parties. Security interests (SI) in equipment, inventory, and consumer goods are covered by article 9. Equipment is a good which is not used for personal or household use (consumer good) and which is not held for sale (inventory). To be enforceable as between the creditor and debtor, a security interest must attach. To attach to collateral: 1. the debtor must have the right to grant in interest in the collateral, 2. there must be an signed security agreement which adequately describes the collateral, and 3. the creditor must give value. To adequately describe the collateral, the description must not be overbroad (eg "all assets of debtor"). However, descriptions consisting of "all of debtor's equipment" are generally not overbroad. A purchase money security interest is a security interest granted in exchange for credit to purchase a good. Here, Supplier and Company signed a written security agreement which adequately described the machine (equipment), Company had a right to grant the interest in the machine by virtue of its purchase, and Supplier gave value when delivering the machine. Therefore, Supplier has a valid and enforceable SI in the machine.

The second issue is whether Lender has an enforceable interest.

See rules above for attachment and scope of article 9. Failure to create an an enforceable SI results in the creditor being unsecured. Here, Lender and Company entered into a written and signed loan agreement which purported to give Lender an SI in "all of Company's personal property." While Company had a right to give an interest in all of its property and Lender gave value in the form of $1,000,000, and although the written agreement was signed, its description of the collateral was overly broad because it listed "all of Company's personal property." Therefore, Lender does not have an enforceable SI and is effectively unsecured.

The third issue is whether BigBank has an enforceable interest in the machine.

See rules above for attachment and scope of article 9. After-acquired clauses in security agreements are enforceable. Here, BigBank and Company had a written and signed agreement to provide an SI in all of Company's present and future equipment. Because it describes current and after-acquired equipment, the security agreement is sufficiently specific. Further, Company had a right to grant an interest in its equipment (present and after-acquired), and BigBank provided $750,000 to Company. Therefore, BigBank has attached and has an enforceable SI in the machine.

The fourth issue is which entity has priority in the machine.

Perfection is the process by which creditors enforce their SIs against competing creditors and generally establishes the order of priority as of the date of perfection. Perfection may be accomplished by filing a financing statement in the proper office, listing the true names of the debtor and creditors, and a description sufficient to put others on notice as to the nature of their interest and what collateral it covers. Perfection occurs, for priority purposes, as of the date of filing. Perfection may only occur upon proper attachment. Between unsecured (unattached) creditors and attached creditors, attached creditors have priority regardless of date of filing or knowledge of the unsecured interest. As between attached but unperfected and perfected creditors, perfected creditors have priority regardless of the date of perfection or knowledge of the unperfected SI. Here, as discussed above, Lender failed to attach due to an overbroad description of the collateral and is thus unsecured. Supplier, while having properly attached, did not file a proper financing statement and did not perfect in another way, and is therefore an attached put unperfected creditor. Finally, BigBank properly attached (described above) and filed a financing statement in the proper office which listed Company's present and after-acquired

equipment, which is sufficient notice of the covered collateral, and properly listed Big Bank and Company as the creditor and debtor, respectively. Therefore, BigBank is a secured creditor. As a result, BigBank will have first priority as a secured creditor, Supplier will have second priority as an attached but unperfected creditor, and Lender will have third priority as an unsecured creditor.

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1. (a) Supplier has an enforceable interest in the machine

In secured transactions, a secured party has an enforceable interest in collateral if they attached their interest to the collateral. Collateral can include goods, inventory, farm products, and equipment, or intangibles like accounts. Attachment occurs when the party gives value, the secured party has rights in the collateral, and signs a security agreement or receives possession of the collateral. The security agreement must be specific as to the collateral, and a general statement will not be sufficient to count as a security agreement. It should be in writing, signed, and include the names of the parties. Here, Company bought the machine from Supplier and the supplier gave the Company the machine which the Company paid for in part. The Company had rights in the collateral because it was given to them by supplier through the transaction. They signed a written security agreement that clearly described the machine as collateral for the repayment of the loan, which was sufficiently specific. The Supplier also delivered the machine to Company. The machine constituted equipment because it was to be used in the course of the business to make products. Therefore, since they met all the requirements of attachment, the supplier did have an enforceable security interest in the machine.

1. (b) Lender's interest is not enforceable against the machine.

Again, a security interest must be attached in order to be enforceable. Here, Lender gave value to Company in the form of a loan, and they tried to give collateral in the form of their property for "all of Company's personal property." To secure the loan, the Company gave Lender a security interest in "all of Company's personal property." This was what was written on the security agreement. As mentioned, one of the main elements of a security agreement is that the collateral must be identified with specificity. A security agreement is not valid if it grants collateral in all personal property because that is not an identifiable good, inventory, equipment, farm product, or account. Because the security agreement here is not sufficiently valid, there was not attachment by the Lender to the collateral. Because there was no attachment, the security interest is not enforceable as to the machine.

1(c). Bigbank has an enforceable interest in the machine.

There must be attachment in order for BigBank to have an enforceable security agreement. BigBank did give value, Company had rights to the collateral in their equipment. They also have an enforceable security agreement. BigBank signed a loan agreement with Company and granted the security interest in "all of Company's present and future equipment." This is a sufficiently definite security agreement to secure the loan, and it was signed and in writing. This means that BigBank attached its interest, and the security agreement is enforceable against the machine because the machine is present equipment.

2. Order of Priority

In order to determine priority of interests, the interests must be determined if they are perfected or not. In order to perfect an interest, the party must attach and file a financing statement or give possession of the collateral if it is a good and control if it is an account. A filing statement needs only a general description of the collateral to be sufficient and must be filed with the proper state agency.

a) Supplier's interest- supplier did properly attach their security interest. They also gave possession of the machine to Company, but they did not file a financing statement. A PMSI in goods automatically perfects upon attachment, but a PMSI in equipment does not attach unless a financing statement is filed. Here, the PMSI was made because the Company gave a loan for

a piece of equipment that served also as collateral for the loan, which is the definition of a PMSI. So it had a unperfected PMSI.

b) Lender's interest- Because Lender never attached their interest, filing a financing statement, as they did, would not perfect their interest. Therefore, they do not have a perfected interest in the machine.

c) BigBank's interest- BigBank did attach its interest. Furthermore, BigBank filed a financing statement reflecting the transaction with the proper authority and included the proper information with parties' names and the identified collateral. Therefore, the Bank did perfect its security interest.

The three competing interests here are an unperfected PMSI in equipment, an unsecured creditor, and a perfected security interest in an account. Generally, the first to file or perfect wins, but a perfected PMSI has priority over other security interest. Since the PMSI was not perfected by filing, it does not get priority automatically. A perfected security interests takes priority over a unperfected security interest. So the Bank's interest gets first priority because it is perfected. Otherwise, two unperfected security interests will get priority of first to attach. Since the Supplier attached first, it gets second priority, and the Company gets third priority since it did not attach and is unsecured.

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Whenever a suspect is subject to a custodial interrogation, the police must inform him of his Fifth Amendment Miranda rights to remain silent and to have an attorney present for questioning, and to have an attorney appointed if he cannot afford one. A suspect is in custody when he is arrested or his freedom of movement is limited to an extent similar to arrest, and where he does not feel free to leave. A routine automobile stop for a traffic violation generally is not sufficient to place a suspect in custody unless the individual is actually arrested or his freedom of movement otherwise restrained in a way similar to arrest. Interrogation occurs when law enforcement asks a question of a suspect that he knows or should know is likely to elicit an incriminating response. However, there is no interrogation where the suspect makes incriminating statements to a person that he does not know is law enforcement, because such a situation does not involve the inherently coercive nature of being questioned by law enforcement.

A suspect makes a valid waiver of his Miranda rights if he knowingly and voluntarily waives those rights. Generally, a suspect knowingly and voluntarily waives his Miranda rights by affirming that he understands those rights and continuing to answer questions or speak. A suspect invokes his Fifth Amendment right to remain silent or right to counsel only by an unambiguous statement invoking the right.

(1) Adam's statement to Officer One should be admitted. The issue here is whether was in custody and subject to interrogation. Here, Officer One told Adam after pulling him over that he was not free to leave, which suggests that Adam was in custody at the time. However, he also indicated that Adam would be free to leave once he finished ticketing Adam for a headlight violation, which suggests that Adam's freedom of movement was not severely restricted. Adam's freedom of movement was likely not limited to the extent of an arrest so Adam probably was not in custody. Officer One asked Adam where he and his friends were coming from when they were stopped. At that time, Officer One was not aware of the incriminating evidence behind the pharmacy and therefore probably did not know that asking where Adam came from was likely to elicit an incriminating response. Adam probably was not subject to an interrogation. However, Adam then stated "I say nothing without a lawyer." This is an unambiguous statement invoking the right to counsel. Still, if Adam was not yet subject to custodial interrogation and was not necessarily a suspect in the burglary, Adam had no Fifth Amendment Right to Counsel to assert. Adam's statement that they were coming from the pharmacy did not violate his Miranda rights because he had no Fifth Amendment rights when he made the voluntary statement.

(2) Ben's statement to Officer Two should be admitted. The issue here is whether Ben was subject to interrogation. Here, Officer Two took Ben into a room after arresting him and driving him to the police station. Ben was in custody because he had been arrested. Officer Two improperly gave Ben his Miranda rights by stating vaguely that he had Miranda rights. Thus, Ben was not properly Mirandized. However, Ben admitted that he and his buddies broke into the pharmacy a few weeks ago without the Officer asking an incriminating question. Ben was not subject to interrogation when he made the voluntary statement. Thus, even though Ben did not receive his Miranda rights properly, his statement did not violate his Fifth Amendment rights because it was voluntary and was not the result of interrogation.

(3) Carl's statement to Officer Three should be admitted. The issue here is whether Carl invoked his right to remain silent. Here, Carl was in custody because he was arrested, taken to the police station and put in a room. Officer Three properly read Carl his Miranda rights and obtained a voluntary waiver from Carl when Carl read the rights and affirmed that he understood his rights. The fact that Carl did not speak for two hours is not sufficient to invoke his right to remain silent. Further, the officer reminded Carl of that fact when he stated that he would not assume he was

invoking the right by staying silent; Carl was reminded of his right to invoke the right. Thus, Officer Three properly continued to question Carl. Carl's statement that he was there at the time of the burglary and acted as a lookout was a response to interrogation, but Carl's Miranda rights were not violated because he gave a knowing and voluntary waiver of his rights.

(4) Dillon's statements to Cellmate should be admitted. The issue here as whether Dillon was subject to an interrogation. Here, Dillon was in custody because he was arrested and put in jail. Dillon was never read or otherwise informed of his Miranda rights. Officer Four spoke with a police informant and inmate, Dillon's Cellmate. Officer Four told Cellmate to introduce himself to Dillon, gain his trust, and ask him about the burglary. In exchange, Officer Four offered to pay Cellmate $50 and to convince the prosecutor to release him early. Cellmate later told Officer Four that he did ask he asked and that Dillon bragged to him about being involved in the burglary of the pharmacy and also mentioned a second burglary that was attempted the previous night. Although Cellmate asked Dillon incriminating questions, Dillon likely did not know that Cellmate was working with law enforcement and thus Dillon's statements were not in response to interrogation. Dillon's statements to Cellmate should be admitted.

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1. The issue is whether Adam clearly and unequivocally invoked his Fifth Amendment rights to counsel and silence.

The Fifth Amendment guarantees criminal defendants the right to an attorney and the right to remain silent so as to avoid self-incrimination. In order to avail himself of these rights, a defendant must clearly and unequivocally invoke them. Voluntary conduct or statements inconsistent with the invocation constitute waiver of the right. When a defendant is subject to custodial interrogation, the police are required to issue *Miranda* warnings. A defendant not subject to custodial interrogation is not entitled to *Miranda* warnings. A subject is in custody when, considering the totality of the circumstances, a reasonable person in the defendant's shoes would not feel that he could disregard the police and leave. Factors in determining whether a defendant is in custody include location, length of questioning, whether the police told the defendant he was free to leave, and any coercion or shows of physical force. Questioning amounts to an interrogation when the police suspect the defendant of criminal activity and ask questions or engage in conduct designed to elicit incriminatory responses. Statements given before a defendant is in custody are generally admissible against the defendant, unless he clearly and unequivocally invokes his right to an attorney and/or his right to remain silent.

Here, the police executed a valid pretextual traffic stop of the four men based on reasonable suspicion. The police did not place Adam under arrest, and did not subject him to a custodial interrogation. Officer One informed Adam that he would be free to leave as soon as he finished issuing a ticket and verified the validity of his license. He did not take Adam to another location or otherwise restrict his freedom of movement, and there is no indication that the officers engaged in shows or threats of force or otherwise coerced Adam's statement. Because Adam was not in custody, he was not entitled to *Miranda* warnings. When Officer One asked where the men were coming from, Adam responded, "I say nothing without a lawyer." Although Adam may have intended to invoke his Fifth Amendment rights, this is not a clear and unequivocal invocation. Even if it were, Adam's next statement, "We were coming from behind the pharmacy," was voluntarily given and inconsistent with his earlier statement that he would say nothing without a lawyer. This voluntary inconsistent act constitutes waiver of his Fifth Amendment rights. For these reasons, Adam's motion to suppress his statement will fail.

2. The issue is whether Ben was given sufficient notice of his Fifth Amendment rights.

All of the above rules apply to Ben, as well, and will be applied here. The *Miranda* warnings need not be of an exact form, but must be sufficient to convey to the defendant that he has the right to remain silent, the right to an attorney and the right to have an attorney appointed if he is indigent, and that anything he says can be used against him in court. A defendant may knowingly and voluntarily waive his *Miranda* rights. To knowingly and voluntarily waive the rights, a defendant must understand the rights and either expressly waive them (e.g., by signing a waiver or verbally waiving) or act contrary to the rights absent coercion.

Here, Ben was under arrest and taken to a room by Officer Two. Because Ben's was under arrest and moved to a confined location with only himself and Officer Two, a reasonable person in Ben's shoes would not feel free to disregard the police or leave. Ben was therefore in custody. Officer Two had not yet begun to engage in questioning of Ben, but Officer Two's mention of Miranda rights indicates that he intended to question Ben. For purposes of *Miranda*, it appears Ben was subject to custodial interrogation and entitled to *Miranda* warnings. Officer Two's

statement that, "I need to tell you that you have all the rights the Constitution gives you, along with any Miranda rights you might have. Do you understand?" was insufficient to convey to Ben the substance of his rights. And he did not confirm understanding, since the officer did not actually explain his rights. However, Ben quickly acted inconsistently with his rights by volunteering that he would admit his role in the burglary and testify in exchange for leniency. This likely acts as an affirmative waiver on Ben's part. He didn't ask the Officer to clarify his rights, nor did he request an attorney. There is no indication of coercion, and Ben's knowledge that he may be able to strike a deal is indicative of familiarity with the justice system. For these reasons, Ben's motion to suppress his statement will likely fail.

3. The issue is whether Carl's prolonged silence constituted a clear and unequivocal invocation of his right to silence.

All of the above rules apply to Carl's situation. Carl was subject to custodial interrogation for the same reasons Ben was, although it is more clear here because of the 2 hour length of the interrogation. In this case, Officer Three adequately conveyed to Carl the substance of his rights, and Carl was provided a written copy of the statement. He read the statement and clearly affirmed that he understood his rights. Carl then sat silently for two hours. This is not an affirmative invocation of the right to silence. Carl did not tell the officer that he was invoking his right to remain silent. Officer Three than clearly stated that he would not *assume* Carl's right to remain silent, which could easily have prompted Carl to affirmatively invoke, but he still did not. Carl's subsequent statement, that he was a lookout for the burglarly, was voluntarily given because there is no indicia of coercion. Carl's motion to suppress will likely fail.

4. The issue is whether Cellmate acted as an agent of the police and whether Cellmate's actions therefore violated Dillon's Fifth Amendment rights.

All of the above rules apply to Carl's situation. In addition, though the Constitution generally protects individuals against only state actions, an individual acts as an agent of the police an implicates constitutional rights when the individual acts at the direction of the police.

Dillon was taken into custody, but was not advised of his *Miranda* rights because of Officer Four's sincere but incorrect belief that they had already been administered. Officer Four took Dillon to the county jail and then urged Dillon to gain his trust and ask him about the burgalry in exchange for money and early-release. Because Cellmate acted at the direction of the police, he is an agent of the police for constitutional purposes. However, it isn't clear that Dillon was subject to custodial interrogation and entitled to *Miranda* warnings. The key to custodial interrogation is coercion. An inmate questioned by a cellmate who is unaware that his cellmate is acting as an agent of the police does not feel coercive pressure from the police. Therefore, Dillon was likely not subject to a custodial interrogation and his admission to Cellmate was voluntarily given. Dillon's motion to suppress will likely fail.

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