1.
The issue is whether Adam has a cause of action against Connie based on the crack in the house's foundation.

There are warranties of workmanlike construction and habitability implied when a purchaser buys a new house from a builder. The implied warranties can only be disclaimed by explicit language. However, these warranties are not implied for subsequent purchasers, and must be explicit for subsequent purchasers to receive them.

Here, Connie, a professional builder, built the house. She then conveyed it to Bert with no mention of either warranty. Bert, as the first purchaser of a new house built by a builder, had warranties of workmanlike construction and habitability implied in the conveyance, as neither was explicitly disclaimed. However, Adam was a subsequent purchaser, and his conveyance from Bert did not mention either warranty. As such, he will not receive either warranty. Because Adam had no implied warranty of workmanlike construction or habitability, he has no recourse against Connie for the crack in the house's foundation.

In sum, Adam does not have a cause of action against Connie based on the crack in the house's foundation.

2.
The issue is whether Adam has a cause of action against Connie based on Diane's ownership of a portion of the tract by adverse possession.

A warranty deed typically contains six covenants. However, any one of the covenants can be disclaimed or modified by explicit language. In addition, for a subsequent purchaser to have a claim against an original seller (instead of the seller they purchased from), they must sue based on a covenant that runs with the land. The covenant of quiet enjoyment runs with the land and is contained in a warranty deed. The covenant of quiet enjoyment protects a purchaser from third party claims of interests in the land.

Here, Connie conveyed the land the Bert via warranty deed, and Bert conveyed the deed to Adam. Because Connie conveyed the land to Bert via warranty deed, the covenant of quiet enjoyment is warranted to both Bert (who received the warranty deed from Connie) and Adam (because the covenant of quiet enjoyment runs with the land). However, also included in the deed was the language excepting from warranties "all titles, covenants, and restrictions on record with the county recorder." Diane's ownership of the

tract was recorded through filing at the county recorder's office. Thus, this ownership interest was excluded from the warranty deed and the covenant of quiet enjoyment. Because this ownership interest was explicitly excluded from the covenant of quiet enjoyment, Adam cannot sue for breach of the covenant based on this interest. As such, Adam does not have a cause of action against Connie based on Diane's ownership of a portion of the tract by adverse possession.

3.
The issue is whether Adam has a cause of action against Bert based on Diane's ownership of a portion of the tract by adverse possession.

A quitclaim deed contains no warranties. As such, the purchaser of property by quitclaim deed has no recourse based on the deed against the seller for any encumbrances to the land.

Here, Bert conveyed the land to Adam via quitclaim deed. Because the deed contained no implied or explicit warranties, Adam has not recourse against Bert based on Diane's ownership of a portion of the tract by adverse possession.

In sum, Adam has no cause of action against Bert based on Diane's ownership of a portion of the tract by adverse possession.

4.
The issue is whether Adam has a cause of action against Connie based on the neighbor's easement over the tract.

A warranty deed typically contains six covenants. However, any one of the covenants can be disclaimed or modified by explicit language. In addition, for a subsequent purchaser to have a claim against an original seller (instead of the seller they purchased from), they must sue based on a covenant that runs with the land. The covenant of quiet enjoyment runs with the land and is contained in a warranty deed. The covenant of quiet enjoyment protects a purchaser from third party claims of interests in the land.

Here, Connie conveyed a warranty deed to Bert, thus there is a covenant of quiet enjoyment which runs with the land and Adam may avail himself of. In addition, the explicit language of the deed does not exclude any unrecorded interests in the land from the warranties. The neighbor's implied easement by necessity is an unrecorded interest in the land. Thus, it is not excluded

from the warranties. In addition, because it is an interest in the land held by a third party, it fits in the covenant of quiet enjoyment.

In sum, Adam has a cause of action based on the covenant of quiet enjoyment against Connie based on the neighbor's easement over the tract.

The first issue is whether Adam has a proper cause of action against Connie based on the crack in the foundation. When a professional builder sells a newly constructed home to a buyer, there is an implied warranty of suitability. In other words, the fact that a professional builder built the house implies a warranty that it was build properly and without major defects. A general warranty deed includes express present and future warranties, but regardless of what type of deed is conveyed, when it is from builder to buyer, the implied warranty of suitability follows. Conversely, quitclaim deeds contain no warranties and simply convey any and all interest that the grantor has to the grantee without any warranty. All that said, the implied warranty continues to live on with subsequent purchasers. The only limit on the implied warranty is that a buyer, or subsequent buyer, must bring the action within a reasonable time after construction in the name of fairness. Here, Connie was a professional builder and sold the house to Bert via warranty deed. That deed contained the six present and future warranties of a general warranty deed, but also contained an implied warranty for suitability because Connie is a professional builder. Bert then conveyed the property to Adam via quitclaim deed. Because Bert had the benefit of the implied warranty contained in his interest in the property, that warranty was conveyed to Adam upon the quitclaim deed. Moreover, the warranty was breached because a crack in the foundation of the house was due to faulty construction. Lastly, the home was built four years ago which likely is a reasonable time in which to bring a breach of the implied warranty of suitability. If the court found that four years was unreasonable, then it would deny the claim. As such, because Connie was a professional builder and the implied warranty of suitability travels to subsequent purchasers, and because the action was brought within a reasonable time, Adam has a cause of action against Connie relative to the crack.

The next issue is whether Adam has a cause of action against Connie regarding Diane's adverse possession. As stated above, general warranty deeds convey three present and three future warranties to the grantee, but quitclaim deeds do not convey such warranties. Quitclaim deeds convey whatever interest the grantor has to the grantee. Here, even though Bert's conveyance from Connie was for the entire 5 acres, it contained a waiver of warranties against titles or covenants or restrictions on record with the county recorder. Diane's restriction or ownership of that strip of land was granted in a court judgment and recorded with the county recording office. As such, Bert did not have a cause of action against Connie for Diane's recorded interest in the property because it was recorded and thus excepted. Moreover, because Bert conveyed via quitclaim deed to Adam, Adam similarly does not have a cause of action against Connie for Diane's ownership

interest. This is simply because if Bert did not have that right, then certainly Adam does not because he received the land via quitclaim deed. Moreover, even if the provision in the deed was unenforceable, both Bert and Adam were on record notice of Diane's ownership of the land because it was properly recorded. Thus, Adam does not have a cause of action against Connie regarding Diane's ownership interest.

The next issue is whether Adam has a cause of action against Bert regarding Diane's ownership of the land. Quitclaim deeds transfer only the interest that the grantor has at the time of conveyance, no more and no less. Even though Bert did not know it, his ownership of the land was restricted by Diane's adverse possession of the westerly portion. Bert did not own that land, Diane did. Thus, Bert did not convey that land to Adam because the conveyance was via quitclaim deed. Lastly, Adam did not inspect the tract of land, and if he had, he would have had inquiry notice of Diane's usage of the westerly portion because of her garden that Adam would see clearly. Thus, because Bert made no warranties regarding title to the land, Adam does not have a cause of action against Bert.

The final issue is whether Adam has a cause of action against Connie based on the neighbor's easement. An easement is an encumbrance against title that must be disclosed to buyers. An easement by necessity is a restriction on the property that is not recorded in the county recording office because it is created by operation of law, not by conveyance or agreement between parties that is subsequently recorded. As such, the easement is not covered by the exception in the deed for restrictions on record with the county recorder. Moreover, the restriction violates the warranty against encumbrances, which requires that the any restrictions or easements be disclosed to the buyer and the buyer is protected from a reasonable risk of litigation regarding title following conveyance. As such, Bert would have had a cause of action against Connie if he were in Adam's shoes. That said, in this case, Bert's cause of action would not transfer over to Adam because of the quitclaim deed. Adam's conveyance from Bert contained only Bert's interest without warranty, and even though Bert didn't know of this restriction, that restriction existed at the time of Bert's ownership. Moreover, if Adam had inspected the property, he would have had inquiry notice because the existence of the gravel road is obvious. Because Bert's title to the property was properly restricted by the easement by necessity, and because the land was conveyed to Adam by quitclaim deed, Adam does not have a cause of action against Connie for the easement by necessity.

1. Whether XYZ, as a controlling shareholder of ResortCo, breached a fiduciary duty of loyalty to ResortCo or ResortCo's minority shareholders by causing ResortCo to stop charging CruiseCo docking fees

Fiduciary Duty

The issue is whether XYZ had a fiduciary duty to ResortCo or to ResortCo's minority shareholders. Generally, a shareholder has no fiduciary duty with relation to a corporation or its other shareholders. In the case that a particular shareholder is a majority shareholder, however, they may owe a fiduciary duty to the corporation and the shareholders. Fiduciary duties entail the duty of loyalty and the duty of care.

Here, XYZ likely does owe ResortCo and its other shareholders a fiduciary duty. XYZ owns 90% of ResortCo's common stock, which allows it to pack its board with its own employees. XYZ, then, exerts an outsized influence on ResortCo, so it would likely be held to owe the duties of care and loyalty to the company and its shareholders.

Breach

The issue is whether XYZ's self-dealing was a breach of the duty of loyalty to ResortCo. Under the duty of loyalty, a fiduciary has the duty not to compete with the corporation or to use the corporation for its own financial gain. A self-dealing transaction, in which a fiduciary personally gains from a decision it makes with reference to a corporation, is generally a breach of the duty of loyalty. If a fiduciary makes a self-dealing transaction, however, there is a safe harbor that exists, in which a self-dealing transaction will not be a breach if it is substantively fair, if a majority of the disinterested board members vote to approve the transaction, or if a majority of disinterested shareholders vote to approve the transaction.

Here, XYZ did breach the duty of loyalty because it engaged in self-dealing unprotected by the safe harbor. XYZ's demand of ResortCo that it stop charging CruiseCo fees constituted a self-dealing transaction because it financially benefited CruiseCo, which is owned largely by XYZ. The safe harbor rule likely wouldn't apply in this case because (1) the transaction wasn't substantively fair. CruiseCo had entered into a contract with ResortCo that allowed ResortCo to charge the fees and not charging the fees would hurt ResortCo's bottom line without seemingly any upside. (2) There are no disinterested boardmembers to vote on the matter because all of the board

members are employees of XYZ. (3) Lastly, there does not seem to have been a vote by the disinterested shareholders as to the fee transaction. Accordingly, because XYZ used the board to self-deal and because the safe harbor does not apply, it likely breached its duty of loyalty.

2. Whether ResortCo's minority shareholders are likely to prevail if they challenge the board's decision not to declare a dividend this year

The issue is whether the board breached its duty of care by not issuing a dividend. Generally, shareholders have no automatic right to dividends. When the decision not to issue a dividend constitutes a breach of the duty of care, however, shareholders may challenge the board's decision in court as a breach of the duty of care. The duty of care entails the duty to act as a prudent person would in the shoes of the board members. The duty of care also entails a duty of reasonable investigation before making decisions that bind the corporation. If board members possess specific skills, they are expected to use those skills in their transactions.

Here, the minority shareholders would likely not prevail if they challenged the board's decision not to declare a dividend because the board did not violate its duty of care. When the board decided not to declare a dividend, it relied on a report of the financial implications of the dividend from the CFO and an independent accountant and on an advisory opinion prepared by an outside law firm. That all suggests that the board did proper investigation into the financial ramifications of declaring a dividend, which militates against a finding that they breached their duty of care. The decision, moreover, was so that the corporation could retain funds to construct more hotels and increase ResortCo's market share. That basis suggests that the board intended to benefit the corporation by not declaring a dividend, which shows that they were likely acting as a prudent person would in the best interests of the corporation. Accordingly, the minority shareholders would likely fail if they tried to challenge the board's decision not to issue a dividend.

3. Whether ResortCo board's decision to purchase Ava's land is protected by the business judgment rule

The issue is whether the business judgment rule, which would apply, protects the board in this case. The business judgment rule is a presumption that a board member was acting in the best interests of the corporation when it made a decision on the corporation's behalf. It does not apply in the case

that a decision was a transaction that entailed self-dealing. The BJR may be overcome by strong evidence that the board did not act as a prudent person would under the circumstances, thereby constituting a breach of the duty of care.

Here, while the BJR would apply, it likely wouldn't protect Resortco's decision to purchase Ava's land. The BJR would apply here because there was no self-dealing involved. Ava had no prior connections with ResortCo, so the transaction wouldn't likely be considered self-dealing. Accordingly, the board would be entitled to a presumption that they acted in the best interests of the corporation. However, that presumption likely isn't strong enough to protect the board from having breached their duty of care due to the lack of consideration of the decision by the board. The board does not seem to have done any research into the parcel of land. It did not obtain guidance about the fairness or impact of the transaction from either outside experts or ResortCo's CFO before voting. It also does not seem to have conducted meaningful discussions about the property before purchasing it. The board only discussed the matter for 15 minutes before voting to purchase it. Lastly, had the board done its due diligence, it would have found out that the property was being sold for above its fair market value. Accordingly, there is strong evidence that the board members breached their duty of care here, so, while the BJR would apply, the evidence strongly shows that they breached their duty of care and it likely would not prevent them from having breached.

1. The issue is whether XYZ Corp, as a controlling shareholder of ResortCo, breached a fiduciary duty of loyalty to ResortCo or ResortCo's minority shareholders by causing ResortCo to stop charging CruisoCo docking fees.

Generally, shareholders (as mere owners of a corporate entity) do not owe other shareholders any fiduciary duties. A controlling shareholder, however, does owe fiduciary duties to minority shareholders. A controlling shareholder may be a parent company of a wholly owned subsidiary or one that owns a controlling stake of the voting stock of the corporation. Here, because XYZ owns 90% of ResortCo's common stock, and has the power to choose all members of the board of directors of ResortCo, it is a controlling shareholder and owes ResortCo's minority shareholders the fiduciary duties of care and loyalty.

Under the MBCA, adopted by State A, the duty of loyalty generally includes the duties not to usurp a corporate opportunity, compete with the corporation, or--at issue here--to engage in self-dealing. A breach of the duty of loyalty may be "cleansed" by one of three methods: a vote of ratification by the majority of the disinterested shareholders, a vote of ratification by a majority of the disinterested directors, or a showing of the transaction's fairness to the corporation.

Here, XYZ engaged in self-dealing when it ordered ResortCo's board to stop charging CruiseCo (a wholly owned subsidiary of XYC that had encountered financially difficulty as a result of decreased profits and raised docking fees) docking fees, even though ResortCo was contractually entitled to those fees. Moreover, this breach of the duty of loyalty was not cleansed by any of the means described above, as there was no ratification by the 10% minority (disinterested) shareholders, nor any disinterested directors on the board (of which there are none, as XYZ votes its controlling shares to place XYC employees in all seats on ResortCo's board), nor has there been or could there be a showing of the transaction's fairness to the corporation. No such showing is possible on these facts as ResortCo was contractually entitled to the docking fees, the docking fees were the same as ResortCo charges other cruise lines, and the transaction hurt ResortCo (for the sole purpose of benefiting CruiseCo and XYZ) by lowering its revenues. Therefore, XYZ did breach its fiduciary duty of loyalty to ResortCo's minority shareholders by causing it to stop charging CruiseCo docking fees.

2. The issue is whether ResortCo's minority shareholders may successfully challenge the board's decision not to declare a dividend this year.

The decision to issue dividends rests solely within the discretion of a corporation's board of directors. Indeed, shareholders do not have an affirmative right to dividends and cannot effectively demand dividends from the board. A decision regarding whether to issue dividends, like many corporate decisions, will be protected by the business judgment rule. Recognized under the MBCA, the business judgment rule presumes that a board of directors acts in good faith and in the best interest of the corporation provided the board is adequately informed about its decisions. Absent a showing of bad faith or a breach of the duty of loyalty, the business judgment rule effectively shields directors from challenges to decisions made with adequate information.

Here, ResortCo's board reached a unanimous decision not to issue the corporation's usual yearly dividend. This decision was reached after the board considered--for several hours--a report on the financial implications of the potential dividend from the company's chief financial officer and its independent accountant, as well as an advisory opinion prepared by an outside lawfirm; the decision was supported by the rationale that retaining funds would allow ResortCo to construct new hotels and increase its market share. Therefore, it is not highly relevant that the corporation typically issued a yearly dividend. Because the board reached this decision with what would certainly be adequate information and deliberation, it is protected by the business judgment rule. If ResortCo's minority shareholders were to challenge the decision, they would not be likely to prevail.

3. The issue is whether ResortCo's board of directors' decision to purchase Ava's land is protected by the business judgment rule.

As stated above, the business judgment rule protects board decisions that are made with adequate information and deliberation, presuming such decisions to be made in good faith and in the best interest of the corporation.

Here, ResortCo's board reached its decision to purchase Ava's land after only 15 minutes of discussion, without obtaining any guidance about the transaction's fairness or potential impact on the company's financial condition from outside experts or from ResortCo's CFO. Indeed, the price paid by ResortCo ended up being above the property's fair market values. The board cannot show a need or justification to have made this decision with such haste or without adequate information, as Ava told the president of the corporation that she hold the offer open for 48 hours, which could have provided the board with time to receive more information with which to make its decision. Because the board did not act with adequate information, its decision to purchase Ava's land is likely not protected by the business judgment rule.

1. The issue is whether the application of the new statute violate the Contracts Clause. The Contracts Clause prohibits a state law from substantially interfering with the parties underlying rights in a pre-existing contract. Substantial interference occurs if it statute negates most or all of a party's rights under the existing contract. However, in a contract between two private parties, a state law may still be upheld if it was reasonable and necessary to achieving an important state interest (this is an exception to the clause).

Here, the application of the new state law to CarCo's rights under its dealership agreements does violate the Contracts Clause. The statute requires that all manufacturers shall have good cause for terminating dealership agreements with dealers located in county's with less than 1,000 people, irrespective of the express contract terms. More specifically, under all of its contracts, CarCo retains an absolute right to terminate the agreement with any dealer, for any reason, so long as 60 days written notice is provided. This provision is material to CarCo's business because poor performing dealerships adversely impact CarCo's profitability. CarCo also announced two years ago its plan to expand its online business and terminate several contracts with rural dealerships.

In applying this statute to these pre-existing CarCo contracts with dealers, the state is substantially interfering with CarCo's rights under the contract by severally restricting a material provision of the contracts (i.e., ability to terminate for any reason rather than for cause). Other than the termination provision, the facts provide that the other terms include a 10 year length for the agreement and provides a right to sell CarCo's car to the dealer. Thus, the termination provision is not all material but is also a substantial portion of CarCo's rights under the agreements. Consequently, applying the statute does constitute substantial interference.

Additionally, the statute does not fall within the exception of the Contracts Clause. The facts dictate that the statute was meant to address the imbalance of bargaining power between manufacturers and dealers. Fixing the bargaining power between private contracting parties does not serve an important government interest. Thus, the exception does not apply, and the statute, as applied here, does violate the contracts clause.

2. The issue is whether the statute violates the Equal Protection Clause (EPC). The EPC protects against laws that discriminate between two groups of similarly situated groups. A court will apply different standards of review depending on the basis of the discrimination. Rational basis review is one

such standard. Rational basis review requires the challenger of the law to show that the law is not rationally related to a legitimate government interest. Most laws under this standard are upheld. There are higher standards of review, such as strict scrutiny and intermediate scrutiny. However, those standards apply to discrimination based on race, ethnicity or national origin (i.e., suspect classes), or gender/legitimacy (quasi-suspect) - respectively.

In this case, the assertion is discrimination is occurring against automobile manufacturers and dealers since the law only applies to them rather than other types of contracts that contain similar termination provisions. The basis of discrimination, therefore, is predicated on CarCo being an automobile manufacturer. Consequently, since automobile manufacturers are not a suspect class nor a quasi-suspect class, a court would apply rational basis review.

Under rational basis review, the probable legitimate state interest is protecting private parties in these contracts by helping alleviate the imbalance of bargaining power. CarCo will most likely fail in establishing an EPC violation because the statute is rationally related to achieving this stated interest. However, CarCo can raise the fact that the true motive for this statute was to "get back" at car manufacturers, which demonstrates animus toward them. Although some laws under rational basis review can be struck down down to such animus, this animus is generally predicated on racial or gender animus. It is unlikely a court would find this distaste for manufacturers as a legitimate reason to strike down the law under EPC.

3. The issue is whether the statute violates CarCo's substantive due process rights. Under substantive due process, there are fundamental rights and ordinary rights. Fundamental rights include the right to travel, the right to vote, the right to privacy, and the right to bear arms. If a statute regulates a fundamental right, strict scrutiny is triggered. Strict scrutiny requires the government to show that its law is necessary to achieve a compelling government interest. Any other right that is not deemed fundamental is called an ordinary right. Rational basis review applies to statutes that regulate an ordinary right.

Applied in this case, the right to pick a termination provision in a contract is an ordinary right as it does not relate to any of the fundamental rights. Due to this, rational basis review will apply once again. Here, CarCo is challenging the statute's good-cause requirement for terminating the agreements. The purported state interest in doing so is to help balance out bargaining power

in contract negotiations. Thus, the law appears rationally related to this stated interest. Consequently, the statute does not violate CarCo's substantive due process rights.

I. Contracts Clause as applied to State A's statute's application to CarCo's dealership agreement.

The first issue is whether State A's statute substantially and retroactively impairs CarCo's rights under its dealership contracts.

The Contracts Clause of the federal constitution prohibits states from passing laws that retroactively impair private contracts. As such, where the statutory impairments to existing contracts between private parties is so severe as to substantially impair the parties' rights, the state must show that the measure must be the least restrictive alternative to achieve a compelling government interest.

Here, as applied to CarCo's dealership agreements, the statute substantially impairs the value of the contract. It prohibits at-will termination and imposes this burden on contracts entered into "before and after" the statute.

CarCo's at-will termination with notice provision was a integral part of its distribution strategy. CarCo's dealership agreements were long-term, 10 year commitments. A badly performing dealership would drag down CarCo's own performance and profits.

The provision was a crucial, and widely accepted, piece of CarCo's dealing arrangements - it refused to and never once had entered a dealership contract without it.

application of the statute would upset a fundamental assumption and key protective provision for CarCo, locking them into long-term contracts for 7 more years where they had otherwise been able to walk away.

Regardless of whether mimicking the outcomes of "equal bargaining power" is a compelling state interest, the statute is not the least restrictive alternative to protect rural car dealerships. The state could

II. State A's statute and the Equal Protection Clause

The Equal Protection issue lies in whether the statute was irrationally based solely on legislative animus.

The Equal Protection Clause of the Fourteenth Amendment protects against the state treating similarly situated people differently. Where a state seeks to treat people differently on the basis of race, national origin, or alienage, the

courts will subject a statute to strict scrutiny, and the use of gender and legitimacy triggers intermediate scrutiny.

Any other classification is tested under rational basis, whereby the claimant must show the statute is not rationally related to any legitimate state interest the state might advance. This is a very lenient standard, but the Supreme Court has held that a statute motivated solely by mere animus against the class is not rational. under this standard, the court has invalidated laws discriminating on the basis of sexual orientation based solely on legislative animus against one specific orientation.

Here, CarCo argues the statute impermissibly discriminates between auto-dealership contracts and all other contracts. A classification based on the subject matter of the contract is not suspect or quasi suspect, so the statute must only survive rational basis.

The statute purports to, and does, protect the contracting rights of its citizens on the grounds of structural bargaining imbalances, and indirectly preserving rural citizen's access to automobiles. These are a legitimate interest, and the statute, by imposing for-cause termination, is rationally related to this aim.

However, CarCo does have evidence of legislative animus against auto manufacturers terminating rural dealers, in the form of "some" legslators' statements that the statute was a "good way to get back at them." The legislative findings and statement however, do not directly coincide with this impermissible animus.

Thus, the statute does not violate the equal protection clause of the fourteenth amendment.

III. State A's statute and CarCo's substantive due process rights

The last issue is whether State A's statute was rationally related to a legitimate state interest.

The Supreme Court has concluded that the Due Process Clause of the Fourteenth Amendment protects against unreasonable interference with certain substantive rights. The reasonableness of a statute's imposition depends on the nature of the right being infringed. Infringments of fundamental rights - the First Amendment, the right to privacy, and the right

to travel - are judged under strict scrutiny. Any other "right" is evaluated under the lenient rational basis standard.

Here, the statute does not burden a fundamental right, and so must pass rational basis. The right - of at-will termination of rural dealership contracts - is burdened by the statute's requirement for for-cause termination, which is directly related to the state's legitimate interest in protecting its citizens in contracts and their access to necessary items.

As such, the statute does not violate CarCo's substantive due process rights.

1. The first issue is whether the store owner and SignCo entered into a contract on May 1.

To form a contract, there must be an offer, acceptance, consideration, and sufficient terms. Under Article 2 of the Uniform Commercial Code (UCC), the only terms required in a contract for the sale of goods is a quantity term. All other terms may be filled by the UCC's gap filler terms. An offer is a manifestation of a willingness to be bound by the terms of the contract and which creates the power of acceptance in the offeree. An acceptance is a manifestation of a willingness to be bound by the terms in response to an offer. Consideration is a bargained for legal benefit given or legal detriment suffered, or promise to so give or suffer. A legal benefit or detriment can be of any magnitude, but must be offered in order to induce the other party to accept the contract.

Here, a contract was formed because there was an offer and acceptance of the terms of the sign contract, accompanied by sufficient consideration. The offer and acceptance took place during the meeting between the store owner and the representative. The terms of the contract were sufficient because they included a quantity term, 1 sign. Sufficient consideration was present because the store owner gave $5,000 for the contract and SignCo promised to give the sign.

In conclusion, SignCo and the store owner entered into a contract because there was manifest offer and acceptance of sufficient terms accompanied by sufficient consideration.

2. The second issue is whether the contract is enforceable, under the specialized goods exception to the Statute of Frauds, against the store owner even through the store owner did not sign a document reflecting the agreement.

The Statute of Frauds requires that, to be enforceable, a contract for the sale of goods worth more than $500 is in writing and signed by the party against whom enforcement is sought. However, there is an exception for specially manufactured goods. A contract that otherwise violates the Statute of Frauds is enforceable if the contract is for goods that are specially manufactured for the buyer and the seller has substantially progressed in making the goods. Goods are specially manufactured if they are only salable to the buyer in the contract and cannot be easily sold to another party.

Here, the Statute of Frauds is not satisfied because the contract was for a sign worth $5,000. However, the contract is still enforceable under the specially manufactured goods exception because the sign is a specially manufactured good and SignCo substantially progressed in making the sign. The sign is a specially manufactured good because the sign bore the unique name of the store owner's store on it, which means that it cannot be easily sold to another party since no other party has the same name as the store. SignCo substantially progressed in making the sign because they had substantially progressed in shaping the glass into the store's name.

In conclusion, the contract is enforceable under the specialized goods exception to the Statute of Frauds.

3. The third issue is whether, if an enforceable contract existed, was the store owner bound to accept the goods from the delegated-to party, the substitute manufacturer.

Generally, duties under a contract may be delegated freely, and benefits may be assigned freely. However, a party may not delegate duties if the other party has a specific interest in having the original party perform the contractual duties. If there is no specific interest, then the duties may be delegated. If duties are delegated, then the other original party must treat their performance as if the delegator had performed. The delegator does not have to inform the other party that they are delegating their duties. Under Article 2 of the UCC, which governs contracts for the sale of goods, a seller is bound to provide perfect tender to the buyer. Perfect tender is perfect delivery of goods which perfectly conform to the contract standards. Perfect delivery means that the delivery is in line with the contract standards as to when, how, and where the delivery is performed.

Here, SignCo properly delegated its duties to the substitute manufacturer because there was no provision in the contract which prohibited delegation and the store owner did not have a specific interest in having SignCo perform the contract. The store owner did not have a specific interest in having SignCo perform the contract because the only reason that the store owner chose SignCo was because of their low prices, not because of anything unique to SignCo. The store owner is getting the same sign at the same price, so there is no specific interest in having SignCo perform the contract. Therefore, the store owner's refusal to accept a sign from the substitute manufacturer is ineffective.

Additionally, the store owner may not reject the sign because the substitute manufacturer perfectly tendered the contracted for sign to the store owner. The sign was perfectly tendered because it was delivered perfectly in line with the contract specifications and the sign perfectly conformed to the contract specifications. The sign was perfectly delivered because it was delivered on May 31 when the contract stated that the sign would be delivered no later than May 31. The sign perfectly conformed to the specifications, as stated in the facts.

In conclusion, assuming that an enforceable contract exists, the store owner is bound to accept the sign because SignCo's duties were properly delegated and the substitute manufacturer perfectly tendered the sign to the store owner.

At issue is whether the UCC or common law applies to this fact pattern. The common law applies to contracts for services or real property. The UCC applies to contracts for the sale of goods. This fact pattern involves the transaction of the creation and sale of a sign for $5,000. A sign is a moveable piece of property at the time of contracting, so it is a good. The contract also includes SignCo's services in creating the sign.

When a contract includes both, the court will look at the predominant purpose of the contract. It appears that the store owner selected SignCo based on their low prices and not any specialized skills of SignCo. Therefore, the predominant purpose of the contract is the purchase of the sign for $5,000.

Therefore, the issues will be governed by the UCC.

1. Did the store owner and SignCo enter into a contract on May 1?

A contract is basically legally enforceable promises. It must contain an offer, an acceptance, and consideration.

Was there an offer?
An offer is an objective manifestation of the offeror to enter into an agreement and leaves the power of acceptance in the offeree.

Here, in the negotiations, SignCo offered to create the sign to the specifications of the store owner. SignCo promised to follow the store owner's specific guidelines about the kind, size, shape, and details of the sign. They also offered to have it done by May 31.

Therefore, SignCo made a valid offer to store owner to promise to create the sign she wanted.

Was there acceptance?
An acceptance is an objective manifestation that the offeree intends to be bound by the terms of the offer.

Here, store owner agreed to pay $5,000 for the sign that SignCo offered to make. She accepted SIgnCo's offer to create the sign.

A contact under the UCC is valid if the quantity is included, other essential terms can be filled in with gapfillers. Here, the quantity is one sign.

Therefore, there was acceptance.

Was there consideration?
Consideration is the bargain for exchange; a legal detriment or benefit for either side.

Here, store owner promised to pay $5,000. She was induced to pay this money in exchange for the benefit of the sign she expected. Additionally, SignCo promised to spend time and manpower creating the sign to store owner's specifications. They are only induced to spend this time and energy on the sign because of the expected $5,000 from store owner.

Because each side is promises to exchange a benefit or detriment to the other side, in inducement of the expected return promise, there is consideration support this contract.

Therefore, yes, the store owner and SignCo entered into a contract on May 1.

2. Assuming that the storeowner and SignCo entered into an agreement on May 1, is it enforceable against the store owner even though the store owner did not sign a document reflecting the agreement?

Some contracts must be in writing to satisfy the Statute of Frauds. One of those kinds of contracts are those for goods of more than $500. This means, in order for the contract to be enforceable, it must be in writing, signed by the party against whom it is being asserted, and include essential terms of the agreement (or only quantity if it is a UCC-governed contract).

Here, the sign being discussed is for $5,000. And as stated above, the sign is a good. The contract was oral and nothing was signed or in writing about the promises the store owner or SignCo made.

Therefore, the store owner can assert the defense of Statute Of Frauds for the contract not being in writing.

Does an exception apply?

However, there are exceptions to the writing requirement of the Statute of Frauds. This includes various kinds of performance that will prove the existence of a contract even without a writing. One exception is for custom goods. When a contract is orally agreed to for custom goods, and progress

has started on the custom goods, then the contract is deemed to exist and the party cannot claim the contract failed for not being in writing. This protects situations where the custom and unique goods are being manufactured and likely have no re-sale value if the contract is terminated.

Here, store owner ordered a custom sign. She wanted it to be 10 feet long, bear the unique name of the store, and be constructed of bent red glass. Additionally, the store owner made specific requirements of the sign with her proposed specifications. Because of all these details provided by the store owner, it was a unique, custom item.

Also, SignCo started work on the custom sign. They had substantially progressed before handing the work over to the substitute manufacturer. And on May 31, the sign was completed.

Because the sign was unique, and likely could not be re-sold to another store owner, and because work was completed on the sign, it is likely the exception to the statute of fraud applies.

Therefore, because the exception to the general Statute of Frauds rule applies, a court will likely find that there was a contract formed on May 1.

3. Assuming that the May 1 agreement constitutes a contract that is enforceable against the store owner, is the store owner bound to accept the sign from the substitute manufacturer?

A party to a contract can delegate their duties or obligations under the contract. This delegation does not necessarily need the approval of the other party to the contract. If the other party is not given notice, then the original party remains liable for the obligations. Delegations can happen so long as a provision in the contract does not exclude them, or unless the contract was specifically based on the performance of the specified other party.

Here, SignCo delegated the obligations of creating the sign to substitute manufacturer. Store owner entered into the contract with SignCo originally because of their low prices. There are no facts to suggest that store owner relied on any special artistic skills or knowledge of SignCo in the selecting of them as the sign creator, and nothing to suggest that the contract with SignCo was based on the specific services of SignCo, and not of another sign creator.

Because the contract was not specific as to the creator of the sign, and did not include a provision prohibiting delegation, it is likely that the delegation of duties to substitute manufacturer was valid.

Therefore, because the delegation was valid, store owner is bound to accept the sign from substitute so long as it matches the specifications she requested.

Did store owner anticipatorily repudiate her obligations under the contract?

A party to a contract can anticipatorily repudiate their obligations by giving the other side a clear statement prior to the performance date that they intend not to perform their duties under the contract. Upon hearing this, the other party can either mitigate losses by finding another buyer or, if performance has started, they can keep going and try to enforce the contract.

Here, store owner was very clear in her dislike of the delegation by SignCo to substitute manufacturer. She said she had no intention of accepting a sign made by anyone other than SignCo.

Because of this clear statement, SignCo could have stopped progress on the sign and tried to mitigate their loss or sought damages for the time, energy, and money spent on the sign. Or, it could have continued with the sign and sought performance/payment from store owner anyway.

Because this was a custom sign, and there likely was not going to be a way to mitigate losses by selling the sign to another party, it was reasonable for SignCo to keep working on the sign to completion and see if the store owner changed her mind regarding the sign. Additionally, because the substitute manufacturer followed the store owner's requirements, it was reasonable to believe that the finished sign would meet the store owner's standards and she would pay for the sign.

1) Modification of the Custody Order

The issue is whether enough time has passed since the original child custody order and there has been a significant and continuing change in circumstances to modify the existing custody order.

In determining child custody, Courts consider the best interet of the Child. The best interest of the child considers a number of factors including the childs desire. Courts generally grant children's desires much more weight when the child is over 12. Additionally, courts are reluctant to modify child custody orders to frequently or with little time passing from the order in order to prevenet too much change on the child. Courts may modify a child custody order if there has been a significant and continuing change in the circumstances of the child order which warrant a modification of the order.

Here, the court is unlikely to modify the custody order on the stated grounds of Patricia's cohabitation. The daughter is 13 and expressed an interest in living with her father. Because of the daughters age, the court wwill afford her desire greater weight. Additionally, there is no signifcant and continuing change of circumstance which would justify modification of the original custody order to grant Wanda sole physical and legal custody of the daughter. Harvey's nonmarital cohabitiation with Patrice is insufficinet. While courts will consider not only the fitness of the parent but also the other people with whom the parent associates or lives with and exposes the child to, nothing in the facts indicate Patrice is a danger or negative influence to the child. The daughter indicated "Patrice is fine", that is Patrice does not bother her, and they "get along well". The fact that Patrice was the subject of Wanda and Harvey's affair and the reason for their divorce is insufficient grounds for this modification. Moreover, nonmarital cohabitation is not a signifcant change of circumstance in the modern day to warant such a modifcation.

Additionally, The oroiginal custody order was only two months ago, and a court is unlikely to modify an order with such little time between the original absent emergency circumstances such as a threat to the child, which are not present here;.

Therefore, the facts are not legally sufficient to authorize a mofdification of the custody order because the original order was only two months ago, the child did not indicate a strong desire to live with her mother, there is no signifcant and continuing change of circumstances from Patrice moving in, and there are no emergency circumstances to warrant such a quick modification. The current custody order is in the best interest of the child.

2) Should the court modify the order.

The issue is whether Wanda and harvey can get allong and communicate well enough that joint custody would be in the best interest of Daughter and would be feasible.

When deciding whether to grant joint custody of a child, courts consider not only the best interest of the child but the ability of the parents to effectively and civily communicate and get along with eachother. Additionally, courts consider the parents desires for joint custody. Lastly, courts are reluctant to grant joint custody when parents are unable to acccrimonously communicate and interact because to do so would subject the child to contentious relationships.

Here, the court is unlikely to grant the the court could consider granting joint custody, since the daughter indicated she "wouldnt mind seeing her more", however this is unlikely given the parents current relationship. Wanda already has liberal visitiation rights, and could visit more if the parents come to an agreement. However, the facts indicate Wanda and Harvey stilll have a contentious relationship, and the court is unlikely to modify to joint legal and physical custody given their relationship to avoid subjecting the daughter to such an exchange. Additionally, neither party requested joint custody further indicating a lack of ability for joint custody to be effective. Moreeover, nothing in the facts indicate that joint custody would be in the best interest of the child, because there would be more contention between the parents. Daughters desire to see Wanda more could be better met by a court order increasing the visitation of Wanda, but Joint custody is not effective.

Therefore, the court should not grant joint legal and phyysical custody of Child because the parties are unable to get along, there would be a likely negative effect on the child, and there is a readily available alternative which would allow Daughter to see her mother more as desired without modification to joint custody.

Introduction

This question concerns family law, which is a highly fact-sensitive area where the trial judge is left a great deal of discretion in determining the outcome, and therefore the answers here reflect only one path a trial judge could take in the exercise of this wide discretion.

1. The custody order

The issue here is if the facts have changed since the issuance of the initial custody order to make it in the best interests of the child to alter the custodial situation.

The most important consideration for the court is the best interests of the child, in this case, the daughter. The court will consider a number of factors in determining the best interest of the child, including, for older children (there is no bright line for deciding who is an older child but above twelve is often cited) giving great weight to the wishes of the child. However, the child's stated wishes are not dispositive nor binding on the judge. The court will also consider the interests of the child in a stable home life, in preventing emotional disturbance from being exposed to parental acrimony, in having a stable development and a relationship with her parents, and in preventing the child from having to be dragged through future litigation on modifying the order. Thus, in modifying an order, a court will give special consideration to the desire not to disturb the life of the child by upending her living situation. A lesser consideration is the constitutional rights parents have to raise their children; this right is not absolute (particularly where a child is at risk of harm or otherwise in danger), but courts generally ensure each parent has at least visitation rights to the child. (This also overlaps with the best interests of the child, which in most circumstances involve a healthy relationship with her parents). A court must also consider any applicable constitutional equal protection rules, which usually mean that a court cannot award custody to one parent simply on the basis of his/her sex (relying on sex stereotypes about which sex makes for a better parent).

Here, the court's task is to consider if the change in circumstances since the initial custody order are sufficiently large as to disrupt the findings of fact and bases (including input from the evaluator and the daughter's desires tat the time) to a degree which is proportionate to the potential disruption and difficulty involved in requiring the daughter to uproot and move to her mother's house. In this case, the daughter does not dislike Patrice or object to her presence, and given her age this should be given weight; nor did the

daughter blame Patrice (who was having an affair with her father) for the breakdown of her parent's marriage. Wanda's case seems to rely on the fact that non-marital cohabitation makes a parent inherently unfit to be around children, which is a stereotyped generalization with little connection to the specific facts at hand. Given that Harvey is a devoted father, that the presence of Patrice does not disturb the daughter (and, Harvey's testimony is that Patrice and the daughter "get along well"), there is no evidence that it would be in the daughter's best interest to be uprooted from her current living situation and be deprived of her existing home life and forced through a difficult adjustment period. This is especially important because the change in custody happened only two months ago, and forcing the daughter, who is still adjusting to the change, to switch homes again, would be especially hard on her and thus not in her best interests.

The fact that the mother may regard nonmarital cohabitation as immoral or otherwise unfit for children to be around expresses the mother's view, but the court must consider the *objective* best interests of the daughter, not the mother's subjective opinions. Turning to the daughter's opinions, she did not express a preference for moving homes, although she did desire to see her mother's more, and the absence of a desire to move should be given great weight by the trial judge. Harvey is a "devoted" parent, so there is no concern over the daughter's welfare, and ther mother has not shown any evidence that the presence of Patrice in the home is harmful to the daughter's welfare.

Finally, forcing the daughter to move out because of the father's relationship with Patrice may harm the daughter's best interests. This is because it is generally in a child's interests to have good relations with both parents, and a court finding that by cohabiting with Patrice the father was engaging in disreputable or bad behavior that rendered him an unfit parent might prejudice the daughter's views and relationship with her father.

Therefore, on a holistic consideration of the factors involved, and with priority to the best interests of the child, the facts are *not* legally sufficient to authorize the trial court to consider whether to modify the existing custody order.

2. Joint custody

The issue here is if joint custody would be in the best interests of the daughter.

The same best interests standards discussed in Part 1, *supra*, (as well as constitutional considerations) apply.

Where parents have a good and productive relationship, joint custody is often a good option to help the child foster a positive relationship with both her parents, which is in her best interests in psychologically developing into adulthood. This is especially true where the parents live close to one another and there is not a disruption in the child's life from going from one house to another. However, where the relationship between the parents is acrimonious, joint custody can harm the best interests of the child. This is because joint custody requires a strong level of cooperation and communication between the parents, to ensure the smooth arrangements for keeping their child provided for across two homes, scheduling who will take the child to school, sports, *etc*, and the flexibility to communicate quickly and adjust where circumstances mean existing schedules need to be alter. As such, where neither parent wants joint custody, this may be indicative they are not prepared to have the cooperative and collegial relationship needed to jointly provide for their child's needs. It also requires each parent to recognize the other as a fit person to care for their child, since successful joint custody requires a trusting relationship between the parties when they give one another responsibility in the child's life. Acrimony further may make joint custody not in the interests of the child, because of the risk that the parents may argue at each other when "handing off" the child, may excessively criticize or villify the other parent in front of the child, and generally prevent the child from adjusting to a stable, nurturing normal by continuously extending the very difficult period of adjustment during divorce.

Here, the relationship between Wanda and Harvey remains "bitter and acrimonious". Neither parent wants to share custody (nor wanted to at the initial hearing), and they have been "highly critical of each other's parenting". There is therefore no evidence that either parent would be willing to set aside his or her bitterness and acrimony and have a productive relationship with the other in raising their child, nor that they would be able to refrain from criticizing and villifying the other parent in front of the daughter.

The best interests of the child, therefore, cannot be served by joint custody in this case because the acrimony and bitterness between the parents acts to prevent them from engaging in the cooperation and mutual engagement required to make such arrangements work.

1. Initial disclosures

The first issue is whether the man was required to include in his initial disclosures the information about the insurance policy and the identity of the 3 other witnesses to the accident.

Under the Federal Rules of Civil Procedure (FRCP), the parties are under the obligation to voluntarily disclose certain information in their initial disclosures, which are due within 14 days after the Rule 26 conference. Under the FRCP, the parties must include information about the witnesses and documentary evidence that is helpful to their claims or defenses and for the plaintiff, the disclosures must include computation of damages and for the defendant information about his insurance policy.

Insurance Policy

As stated above, a defendant in a lawsuit is under the mandatory duty to disclose information about his insurance policy that may in part or in full provide coverage for the injuries and damages caused by the insured.

Here, the man had to include the insurance policy information in his initial disclosures because the man had an insurance policy that provided coverage of up to $1,000,000 for personal injuries and property damage. Because this insurance coverage would be able to cover woman's injuries and damages, the man had the mandatory duty to disclose this information in the initial disclosures.

Thus, the man was required to include insurance policy information in the initial disclosures.

Identity of 3 witnesses

Under the FRCP, as stated above, a party must disclose information about witnesses as long as those witnesses will be helpful to the party's claims or defenses.

Here, the man was not required to disclose the identity of the 3 witnesses because they were not going to help with his defense against the woman's claim of negligence. Because the woman sued the man based on negligence, the testimony of the bystander and the 2 other passengers in car were not going to help the man because they were going to testify that the man was in fact negligent because he was looking at his phone at the time of the accident. Because the looking at the phone instead of watching the traffic is a breach of duty of care, and thus constitutes a claim for negligence, these testimonies would not be helpful to the man's defense. The only helpful

testimony to the man's defense is the testimony of the man's brother and the brother's identity was properly disclosed.

Thus, the man was not required to disclose the identity of the 3 witnesses.

2. Deposition testimony
The next issue is whether the court ruled correctly on the woman's attorney's motion to compel the man to answer deposition questions about his eyesight.

Under the Federal Rules of Civil Procedure, discovery is limited in scope to what is relevant to the proceedings and the case at hand and information that is deemed relevant can be inquired into during discovery as long as the information is not protected. Relevancy is generally determined based on what can make a material fact of consequence more or less likely.

Here, the trial court erred in denying the woman's attorney motion to compel because questions about the man's eyesight are relevant to the proceedings. Because the man is sued for negligence based on a traffic accident that occurred while the man was driving, his eyesight is a material fact of consequence because he was the driver. Because he was the driver, he was the person who was responsible for keeping an eye on the road and the traffic and if his eyesight was poor, that would make the fact that he negligently caused the accident more or less likely. Furthermore, the information about the man's eyesight is not privileged or otherwise protected by attorney client privilege or other doctrines.

Thus, the trial court erred in its denial of the woman's attorney's motion to compel the man to answer the deposition question.

3. Motion for Judgment as a Matter of Law
The next issue whether the trial court should grant or deny the woman's motion for judgment as a matter of law.

Under the FRCP, a party may move for a motion for judgment as a matter of law during trial before the case is turned over to the jury. The court reserves the right to rule of the motion until the nonmoving party has been fully heard on the merits. The motion is then viewed in the light most favorable to the nonmoving party. The standard for this type of motion is whether a reasonable jury would be able to find for the nonmoving party based on the evidence presented. The courts are unlikely to take the case from the jury unless the evidence weighs heavily against the nonmoving party.

Here, the woman's attorney followed the correct procedure for motion for judgment as a matter of law because she moved for the motion after the man rested his case. Further, the woman presented sufficient evidence that the man acted negligently while driving his car because she presented 3 independent witnesses who testified that the man was in fact looking at his cell phone when the accident happened and there was not paying attention to the road.

The man presented a single witness - his own brother. The brother testified that that man was not looking at his phone, however, because of the familial relationship to the man, the brother witness is biased and therefore, the jury is unlikely to give his testimony more weight that the testimony of disinterested witnesses like the bystander who observed the accident from the outside or the 2 man who were the man's friends. However, the credibility of the witnesses is determined by the jury.

Thus, because the presented evidence rests heavily on the credibility of the witnesses, that decision should be preserved for the jury, and the trial court should deny the woman's motion for judgment as a matter of law.

1. The issue is whether a party must include insurance information and the contact information for potentially adverse witnesses in initial disclosures.

Pursuant to the FRCP, initial disclosures include information that a party must share with the opposing party at the beginning of discovery. Such information includes a computation of damages, the party's insurance policies that may cover liability for the disputed events, and the names, contact information, and summary of relevant information of any witnesses that the party knows of, that they anticipate using at trial, to bolster their own claims or defenses. A party is not obligated to present information about adverse witnesses in initial disclosures, although this information should be disclosed through interrogatory responses or depositions, if they are responsive to the other party's discovery requests.

Here, the man had a car insurance policy that provided coverage of up to one million dollars for personal injuries and property damage. The accident in dispute involves the man's car colliding with the woman's. The woman had both property damage to her car, and personal injuries that required treatment by a physician. Because the insurance policy covers personal injury and property damage, it is connected to the disputed issue and **the insurance policy should have been disclosed in initial disclosures.**

Regarding the three witnesses in the man's car, the man knew of four total witnesses to the accident since his attorney interviewed them, but he was only required to disclose the name and contact information of his brother, since his brother was the only one who the man would likely use at trial. The brother stated that the man was not looking at his phone. But the other three witnesses said that the man was looking at his phone, which is information suggesting the man was negligent. Since their testimony would be adverse to the man's claim, it is unlikely that he would use it to advance his defense, so **he did not need to offer their identities in his initial disclosures.**

2. The issue is whether the man should have been compelled to answer regarding his eyesight.

In a deposition, a party may inquire into any information relevant to case, even if the information would not be admissible at trial or would raise evidentiary objections at trial. As long as a matter is not privileged or subject to a protective order, or otherwise asked for an improper purpose, such as to embarrass or harass, it may be asked and the deponent must answer. An

attorney should not instruct their client not to answer in a deposition based on an evidentiary objection.

Questions about personal health may be outside the scope of a deposition if they are meant to embaress or harass or are irrelevant, but if they are relevant to the claims in dispute and are made for a proper purpose, the deponent must answer.

Here, the issue in dispute is a car accident and the woman has brought a claim of negligence. If the defendant, the man, has poor eyesight, that would be relevant to whether or not it was negligent for him to drive, or whether he drove negligently because of his poor eyesight. As a result, even though the question was about the man's health, the man's eyesight likely is relevant to the claim. There is no evidence to suggest that the woman's attorney asked the question to harass or embarrass, so **the man should be compelled to answer.**

3. The issue is whether a reasonable jury could not find in favor of the man, entitling the woman to JMOL.

A motion for judgment as a matter of law may be raised after one side finishes presenting their evidence, and before the jury returns a verdict, typically before closing arguments. A court may grant a motion for judgment as a matter of law if no reasonable jury could find in favor of the non-moving party, and the movant is entitled to judgment as a matter of law. The court should view the evidence in the light most favorable to the non-moving party, and should base its decision on the credibility of witnesses, because the consideration is for the jury.

Here, the woman has properly made her motion after the man rested his case. She will argue that no reasonable jury could find for the man because she presented three witnesses who said he was looking at his phone (suggesting his negligence), and the man only presented one witness who said he was not looking at his phone (suggesting he was not negligent). Moreover, the man's only witness was his brother, who likely has bias in favor of the man. The woman also presented her treating physician to describe the nature and extent of her injuries, and this information went unrebutted. Her evidence, she may argue, outweighs the mans, and thus she is entitled to JMOL.

However, the man has the stronger argument that she is not entitled to JMOL. The man did present evidence that he was not negligent, through his

brother's testimony, and whether the brother should be believed and whether his testimony was credible is a matter for the jury to decide. As a result, because it is possible for a reasonable jury to find in favor of the man, **the court should deny the woman's motion for judgment as a matter of law.**