



'Opinionated?'

2021 Legal Opinion Competition

**Fact
Scenario**
A Flaming
Pickle

Background

You and your fellow team members are all law clerks working for a Dunedin law firm that conveniently bears the name of your team.

The firm acts for Luann van Houten, who (with her adult son, Milhouse) owns a company called Luann van Houten Holdings Limited. Your supervising partner, Dennis Denuto, has just met with Luann. It seems that she and Milhouse are in a bit of a pickle.

Dennis has asked your team to provide him with a brief memorandum (no more than two pages) outlining the legal position for Luann and Milhouse, and their options. Sadly, Luann is somewhat fiscally-challenged at the moment, and will not be able to afford another meeting with Dennis, now that he is a famous lawyer with a charge out rate to match. Accordingly, if Dennis rates your memorandum, he would like to meet with you to go over your key findings, with a view to you then meeting with Luann to explain it all to her.

Fact situation

Earlier this year, Luann decided that she wanted to open a nightclub near her home in Maori Hill, Dunedin. She figured that with COVID seemingly under control and students back in their droves, a new club in her 'hood could make a killing. Her friend Apu introduced her to Marge Bouvier-Simpson, who owns a suitable property in that area and was looking for a tenant.

Marge and Luann had a meeting to discuss a lease proposal. A key concern for Luann was the zoning of the property. She asked Marge if the zoning allowed a nightclub. Marge assured her that it did. 'Deffo'.

A commercial lease (copy attached) was duly signed, and 'Sideshow Bob's' (because it makes a killing) was opened to much fanfare. You will see that the tenant is the company that Luann and Milhouse own, and that Luann has provided a personal guarantee.

In May this year, the interior of the nightclub was badly damaged by fire. According to Luann, it was clumsy Milhouse's fault. Milhouse is employed by the tenant company as a barman. He likes to make 'Flaming Moe' cocktails. As the name suggests, this drink is at least one part flammable ...

Marge's insurance company is paying for the repairs. However, Marge is insisting on the bulk of the proceeds being applied towards special new fire-retardant walls and surfaces, with not much left over to restore Sideshow Bob's to its former glory.

The insurer is also suing Milhouse, saying that his negligence caused it loss. Milhouse accepts that he was negligent and that the fire was his fault, but he read on the wall of a toilet in the nightclub something about how the Property Law Act 2007 relieves tenants from liability for damage caused by the tenant's negligence. He asked his JP aunty, Mrs Sheehan Watson, if that was right. Sheehan told him to check whether this only applies to tenants, or whether it extends to their employees. She thought there might be some cases on that, but she's only a JP and never took LAWS203...

Meanwhile, a Dunedin City Council inspector, Ned Flanders, has told Luann that she won't be able to re-open her nightclub. According to Ned, the zoning of the property prohibits such a use. As always, Ned is right. Luann will be in a dilly of a pickle if she has to pay rent under the lease without being able to operate the nightclub ever again.

Luann spoke to her cousin, Lionel. He told her:

'I may have failed my law degree at Vic in the 90s, but I did learn one or two things. Okay, it was only one: you can cancel the lease under the Contractual Remedies Act 1979, because of Marge's misrepresentation.'

Luann then consulted her best friend Google McInternuts, who muttered about section 240-something of the Property Law Act 2007.

The questions:

Luann wants to know:

1. Can Luann insist on the insurance proceeds being applied to restore Sideshow Bob's to how it used to be, assuming she is allowed to re-open?
2. Is Milhouse exposed to the insurer's claim?
3. Can the tenant company cancel the lease because of Marge's misrepresentation?
4. Are there any actions you think Marge should take?

Guidance notes

Please answer each question in sequence and then add a brief note explaining the approach your team took to tackling the challenge. You do not need to consider or address the laws of negligence. You should assume for the purposes of this exercise that the laws of vicarious liability do not need to be considered.

If you need any more information in order to be more definitive in your response, please identify the additional information that you need, or assumed information you are relying on, in your memo.