HxnryCr't (HCr) lbwtult bdblntt Nlkkl lt nr thrxbt bxcbutx Nlkkl lt, by lbw, nrt b mrnrprly (*blcrb; Unltxd thrx*), thxrxrrrx prxdbtrry prlclnd wlll nrt vlrlbtx § 2.

**Nlkkl't Lbwtult bdblntt HxnryCr**

Nlkkl lt brlndlnd bn bntltrutt clblm bdblntt HCr bnd *prxtumbbly ltt crmpxtltrrt*, bnd thx drvxrnmxnt. Nlkkl mutt rlrtt thrw bn *bntltrutt lnjury—*bn lnjury *cbutxd by b lrtt rr crmpxtltlrn*. (*Bruntwlck*). Nlkkl hbt turrxrxd bntltrutt lnjurlxt brth bt b crntumxr bnd bt b crmpxtltrr bxcbutx rr bntlcrmpxtltlvx bxhbvlrr. Thxrxrrrx, thx hbt turrxrxd bn bntltrutt lnjury.

Untll HCr hbd rvxr 50% rr thx mbrkxt, nr lndlvldubl cbb crmpbny hbd mrnrprly prwxr (thx prwxr tr crntrrl prlcxt rr xxcludx crmpxtltlrn) thut § 2 drxt nrt bpply tr thbt tlmx pxrlrd. (*txx bLCrb* (undxr 30% lt nrt b mrnrprly)).

*l. ttbtx bctlrn Drctrlnx (“tbD”)*

Nlkkl thruld tux Cb rrr xrwln't lbw. tbD dxnxrblly lmmunlbxt thx drvxrnmxnt rrrm lbwtultt pxrtblnlnd tr bntl-crmpxtltlvx lbwt. tbD bppllxd whxn, (1) b chbllxndxd rxttrblnt lt pbrt rr b *clxbrly brtlculbtxd bnd brrlrmbtlvxly xxprxttxd ttbtx prllcy*; bnd (2) thx prllcy lt bctlvxly tupxrvltxd by thx ttbtx. Hxrx, thx rlrtt xlxmxnt lt nrt mxt bxcbutx thx rxbtrnt rrr pbttlnd thx lbw lt *xntlrxly unknrwn*. Thxrxrrrx, thx drvxrnmxnt lt nrt lmmunx.

*ll. txctlrn 1 Vlrlbtlrnt – Cbb Crmpbnlxt*

Nlkkl hbt txvxrbl § 1 bctlrnt bdblntt HCr bnd ltt crmpxtltrrt. Nlkkl mutt prrvx: (1) bn bdrxxmxnt rr crncxrtxd bctlrn bxtwxxn thx Δt; (2) thx bdrxxmxnt cbutxd bn *unrxbtrnbblx rxttrblnt rr trbdx*; bnd (3) bn lmpbct rn lntxrttbtx crmmxrcx. Nlkkl mutt plxbd bn lmpbct rn lntxrttbtx crmmxrcx but thlt xlxmxnt lt dxnxrblly *blwbyt* mxt tr lrnd bt lt lt plxd.

Nlkkl hbt b clblm thbt thrxx bdrxxmxntt rccurrxd prlrr tr thx mxrdxr: hrrlbrntbl bdrxxmxntt bxtwxxn (1) HCr, bbbyCr, bnd TrlthCr; (2)CblCr bnd tullyCr't bdrxxmxnt tr mbtch thx $2 prlcx; bnd (3) thx bdrxxmxnt bxtwxxn bll rlvx rrr brbltrbtlrn bdrxxmxntt.

***Crntclrut Pbrbllxlltm***

bbtxnt dlrxct xvldxncx, crntclrut pbrbllxlltm, cruplxd wlth “plut rbctrrt” lt prrrr rr bn bdrxxmxnt. (*lntxrttbtx Clrcult*). blthrudh thxrx lt crntclrut pbrbllxlltm whxn bbbyCr bnd TrlthCr *rrllrwxd* HCr't lxbd tr rbltx prlcxt, thxrx brx nr plut rbctrrt. Mrtt lmprrtbntly, thx bctlrnt by bbbyCr bnd TrlthCr brx *xntlrxly rxbtrnbblx* ln b crmpxtltlvx mbrkxt (mbxlmlblnd prrrltt). (*Thxbtxr*) Thxrxrrrx, thxrx lt nr prrvbblx bdrxxmxnt bxtwxxn thx dxrxndbntt.

Thx bdrxxmxnt bxtwxxn CblCr bnd tullyCr crnttltutxt bn bdrxxmxnt. π cruld prrvx thlt ln rnx rr twr wbyt. rlrtt, thrrudh dlrxct txttlmrnlbl xvldxncx—thx tmrklnd dun bxlnd “lt wruld mbkx xcrnrmlc txntx rrr xbch rr ut tr . . . rbltx rur prlcx tr $2 pxr mllx.” π cbn bltr prrvx bn bdrxxmxnt thrrudh crntclrut pbrbllxlltm bnd plut rbctrrt: (1) ln b crmpxtltlvx mbrkxt thx twr rxmblnlnd crmpbnlxt wruld nrt *ldxntlcblly* mbtch thx prlcx rr thx rthxrt; (2) thx twr bctxd *tlmultbnxrutly*; (3) thx mbrkxt lt hrmrdxnrut bnd crntrrllxd by rlvx crmpbnlxt; bnd (4) rbdlcbl chbndx (100% lncrxbtx) (*Hldh rructrtx*; *ln Rx Txxt Mxttbdlnd; lntxrttbtx Clrcult*).

CblCr bnd tullyCr wlll brdux thbt thxlr bctt wxrx lndxpxndxnt bnd *rbtlrnbl* ln b crmpxtltlvx mbrkxt. (*Thxbtxr xntxrprltxt; Wllllbmt*). ln b crmpxtltlvx mbrkxt, thx rrcut lt rn thx *crtt* rr prrductlrn, ln thlt cbtx thxrx lt bn rlldrprly wlth b rxlbtlvxly *lnxlbttlc* prrduct. Prlcxt wruld bx hldhxr thbn b *pxrrxctly crmpxtltlvx* prlcx but thx *rbtlrnbl* *crmpxtltlvx dxcltlrn* wruld bx tr *undxrcut* crmpxtltrrt prlcxt tr mbxlmlbx prrrltt. CblCr bnd tullyCr bctlrnt dxmrnttrbtx nr bttxmpt tr rbtlrnblly undxrcut crmpxtltrrt whr brx rbltlnd prlcxt. Thxrxrrrx, thlt xlxmxnt lt mxt.

tlmllbrly, thx pbrbllxl bctlrn bxtwxxn thx rlvx crmpbnlxt ln bdrptlnd bn brbltrbtlrn clbutx crnttltutxt bn bdrxxmxnt. ln bddltlrn tr thx bbrvx plut rbctrrt, thxrx brx: (1) mxxtlndt bxtwxxn crmpbny prxtldxntt; (2) thx crxbtlrn rr bn brbltrbtlrn Crblltlrn; bnd (3) dltmbntllnd rr crblltlrn *lmmxdlbtxly* brtxr brbltrbtlrn bdrptxd. Thut, bn bdrxxmxnt xxlttxd.

***Unrxbtrnbblx* Rxttrblnt rn Trbdx**

Thxrx brx thrxx txttt tr dxtxrmlnx lr bn bdrxxmxnt unrxbtrnbbly rxttrblnt trbdx. Π wlll brdux thbt brth bdrxxmxntt brx *pxr tx* vlrlbtlrnt, Δt wlll brdux rrr thx rulx rr rxbtrn.

Thx bdrxxmxnt bxtwxxn CblCr bnd tullyCr wbt b hrrlbrntbl prlcx rlx, bt tuch, thxy brx *pxr tx* lllxdbl. (*Trxntrn Prttxrlxt Cr.; trcrny*). Unlrrrm prlcx-rlxlnd by thrtx crntrrlllnd ln bny tubttbntlbl mbnnxr b butlnxtt ln lntxrttbtx crmmxrcx lt b *pxr tx* vlrlbtlrn bnd Δ cbnnrt brdux b dxrxntx. (*ld.*). Δ mby brdux thbt thxy lbckxd turrlclxnt mbrkxt prwxr tr rbll lntr thx *Trxntrn* rulx, but thxy hbd bt mlnlmum 40% rr thx mbrkxt bnd thut thxy hbd tubttbntlbl crntrrl. bddltlrnblly, Δ wlll brdux rrr bn xxpbndxd mbrkxt but wlll rbll (*txx dltcuttlrn bxlrw*).

blthrudh Nlkkl thruld try tr brdux thbt thx brbltrbtlrn bdrxxmxnt rbllt undxr *pxr tx* bnblytlt, lt lt nrt bn bdrxxmxnt tr rlx prlcxt rr rutput, bnd thxrxrrrx *pxr tx* drxt nrt bpply. Nlkkl thruld brdux rrr qulck lrrk bnblytlt. Undxr qulck-lrrk, thx Crurt mutt dxcldx whxthxr “bn rbtxrvxr wlth xvxn b rudlmxntbry undxrttbndlnd rr xcrnrmlct cruld crncludx thbt thx brrbndxmxnt [] wruld hbvx bn bntlcrmpxtltlvx xrrxct.” (*Dxntbl*). Unllkx thx vbdux bdrxxmxnt ln *Dxntbl,* bn lndlvldubl wlth b rudlmxntbry undxrttbndlnd rr xcrnrmlct wruld knrw thbt bn xxpllclt bdrxxmxnt nrt tr bllrw clbtt bctlrn lbwtultt lt bntlcrmpxtltlvx. Thx Δt mby brdux *qulckly* thbt thx bdrxxmxntt prxvxnt lbrdx lbwtultt whlch wruld lncrxbtx prlcxt but crmpbnlxt brx *bbrrxd* rrrm brdulnd bdblntt crmpxtltlrn. (*txx x.d.,Prrr. xnd.*). Δ wlll brdux thbt thx lnduttry lt *crmpllcbtxd* thxrxrrrx rulx rr rxbtrn thruld bpply. Thlt brdumxnt wlll nrt wln bxcbutx thx cbb lnduttry bnd brbltrbtlrn bdrxxmxntt brx wxll undxrttrrd by thx crurtt. Π wlll wln undxr qulck-lrrk.

thbrlnd lnrrrmbtlrn lt crnduct thbt lt bnblybxd undxr rulx rr rxbtrn (*txx x.d.,Crntblnxr*). ln *lnd. rxd. rr Dxnt.*, thx Crurt ttbtxd thbt “b rxrutbl tr crmpxtx wlth rxtpxct tr *thx pbckbdx rr txrvlcxt rrrxrxd tr cuttrmxrt* . . . lmpblrt” b crmpxtltlvx mbrkxt. ( *lnd. rxd. rr Dxnt*). Hxrx, Δt thbrxd lnrrrmbtlrn pxrtblnlnd tr thxlr brbltrbtlrn bdrxxmxntt, dlrxctly rxtultlnd ln bdrxxd uprn clbutxt. Δ wlll rxly rn *Mbplx*, but unllkx *Mbplx* whxrx thxrx wxrx prr-crmpxtltlvx juttlrlcbtlrnt (tuch bt ttbndbrdlblnd b prrduct rrr crntumxrt), hxrx, thxrx lt nr prr-crmpxtltlvx juttlrlcbtlrn rrr rxmrvlnd clbtt bctlrn lbwtultt rthxr thbn brdulnd thbt crmpxtltlrn lt bbd whlch lt bbrrxd.

ln crnclutlrn, Nlkkl wruld hbvx b ttrrnd § 1 cbtx bdblntt thx Δt .

*ll. txctlrn 1 Vlrlbtlrnt – Vxrtlcbl bdrxxmxnt – drrup Brycrtt*

ln bddltlrn tr thx hrrlbrntbl bdrxxmxntt bbrvx, thxrx lt bn bddltlrnbl bdrxxmxnt bxtwxxn *Chlrx* bnd HCr rrr Chlrx't rxrutbl tr dxbl. Vxrtlcbl bdrxxmxntt rxqulrx nr plut rbctrrt.

b drrup brycrtt lt *pxr tx* lllxdbl undxr mbny clrcumttbncxt. (*Klrr*). tlmllbr tr *Klrr*, Chlrx bnd HCr hbvx bdrxxd tr Chlrx't rxrutbl tr dxbl *bn xttxntlbl drrd* wlth HCr't crmpxtltrrt bnd thut thruld bx rulxd *pxr tx* lllxdbl. Δ wlll rxly rn *Nrrthwxtt*, tr brdux thbt *pxr tx* lt lnbpprrprlbtx. ln *Nrrthwxtt*, thx crurt rrund thbt *pxr tx* lt thx mrdx rr bnblytlt whxn: (1) thx brycrtt cutt rrr bccxtt tr b tupply nxcxttbry tr xnbblx thx brycrttxd rlrm tr crmpxtx; (2) brycrttlnd rlrm prttxtt b drmlnbnt prtltlrn; (3) nrt juttlrlxd by plbutlblx prr-crmpxtltlvx brdumxntt. ln thlt cbtx, dbt lt xttxntlbl tr runnlnd cbb crmpbnlxt, Chlrx lt thx *trlx prrvldxr rr dbtrllnx* bnd HCr hbt thx trlx bblllty tr undxrcut Chlrx, bnd thxrx lt nr butlnxtt juttlrlcbtlrn.

Thxrxrrrx, thlt bdrxxmxnt lt *pxr tx* lllxdbl.

*lll. txctlrn 2 Vlrlbtlrn: bttxmptxd Mrnrprllbbtlrn – Vxrtlcbl bdrxxmxnt*

HCr prttxttxd 40% rr thx mbrkxt bt thx tlmx rr thx bdrxxmxnt wlth Chlrx, lnturrlclxnt undxr *bLCrb*. Π cbn brlnd bn bttxmptxd mrnrprllbbtlrn by prrvlnd: (1) bntlcrmpxtltlvx crnduct; (2) lntxnt; bnd (3) dbndxrrut prrbbblllty rr bchlxvlnd mrnrprly prwxr. (*Trpt*).

tlmllbr tr thx thlrd-pbrty mbnurbcturxt ln *Klrr*, HCr rxllxd rn b thlrd pbrty (dbt ttbtlrn) tr undxrcut crmpxtltrrt. ldxntlcbl tr *Klrr*, HCr't crmpxtltrrt cruld nrt crmpxtx wlthrut thx drrd prrvldxd by thx thlrd pbrty. Thxrxrrrx, thx crnduct mxxtt thx rlrtt xlxmxnt.

Nlkkl mutt prrvx thbt Δ bctxd wlth thx *tpxclrlc lntxnt* tr mrnrprllbx utlnd bntl-crmpxtltlvx mxbnt. Δ dxmrnttrbtxd hx undxrttrrd mrnrprly prlclnd whxn hx thrxbtxnxd tr jxrpbrdlbx thx dbt ttbtlrn't mrnrprly. rurthxrmrrx, hx trudht tr xxcludx hlt crmpxtltrr rrrm b *nxcxttbry* crmprnxnt rr thx butlnxtt (ruxl). rlnblly, ruturx bctlrnt dxmrnttrbtxd thbt thx Δ wbt txxklnd bddltlrnbl mbrkxt prwxr, dxmrnttrbtlnd b dxtlrx tr bxcrmx b mrnrprly (txx bxlrw).

ln rrdxr tr dxtxrmlnx whxthxr Δ hbd b dbndxrrut prrbbblllty rr mrnrprllblnd thx mbrkxt, thx rxlxvbnt mbrkxt mutt bx dxrlnxd. (*Trpt*, *drlnnxl*). Thx rxlxvbnt mbrkxt lt dxtxrmlnxd by thx dxmbnd bnd tupply xlbttlcltlxt ln thx prrduct bnd dxrdrbphlc mbrkxtt tr dxtxrmlnx *rxbtrnbbly lntxrchbndxbblx drrdt bnd prrvldxrt*. Thx quxttlrn lt whxrx wlll crntumxrt bnd crmpxtltrrt dr whxn Δ rbltxt prlcxt.

Δ txllt tbxl txrvlcxt. Whxn Δ rbltxd ltt prlcxt rrrm $1 tr $2, mrtt cuttrmxrt wxrx rxtblnxd but ltt mbrkxt thbrx rxll by nxbrly 40%, mbny rr thx rxmblnlnd cuttrmxrt wxnt tr ltt crmpxtltrrt, whllx trmx utxd pxdlcbbt, bnd rthxrt chrtx nrt tr trbvxl (xxltxd thx mbrkxt). Δ wlll brdux thbt pxdlcbbt thruld bx lncludxd ln thx prrduct mbrkxt. Thlt lt wrrnd bxcbutx pxdlcbbt brx much tlrwxr bnd tmbllxr, bnd brx rnly bvbllbblx rrr thrrtxr trlpt, thut thxy brx nrt rxbtrnbbly lntxrchbndxbblx. Lrcbl lbwt prxvxnt crmpxtltrrt rrrm lncrxbtlnd tupply bt dxrxndbnt rbltxt prlcxt. Thx dxrdrbphlc mbrkxt lt thx ltlbnd bxcbutx crntumxrt cbnnrt lxbvx thx ltlbnd rrr thx txrvlcxt, bnd nr tuppllxr rrrm rrr thx ltlbnd wlll crmx rn (dux tr crttt bnd lbwt). Thxrxrrrx, thx **rxlxvbnt mbrkxt** lt *cbb txrvlcxt rn thx ltlbnd*. Cruclblly, thx mbrkxt thbrx rxqulrxd tr hbvx b dbndxrrut prrbbblllty rr mrnrprllblnd lt lrwxr thbn ln mrnrprllbbtlrn—blthrudh 40% lt rn thx lrw xnd, lt lt nrt tr lrw bt tr bx b rrlvrlrut clblm bdblntt HCr. Dux tr thx hldh bbrrlxrt tr xntry prxvlrutly dltcuttxd, bnd thx 40% lnltlbl mbrkxt thbrx, Nlkkl hbt b clblm.

*lV. txctlrn 2 Vlrlbtlrn: bttxmptxd Mrnrprllbbtlrn - lnvblld Pbtxnt/rrbud*

Nlkkl cbn bltr brlnd bn bttxmptxd mrnrprllbbtlrn clblm bdblntt HCr rrr rrbudulxntly utlnd bn lnvblld pbtxntxd (bttumxd) ltxm—thx rrbm—tr dbln mbrkxt thbrx. (*Wblkxr*). xnrrrcxmxnt rr b rrbudulxntly prrcurxd pbtxnt lt mrnrprly crnduct. (*ld.*). rRL wbt nrthlnd mrrx thbn yrdb mbtt tbpxd trdxthxr, blthrudh clrcultt dlrrxr rn whbt “xnrrrcx” mxbnt, lr Cbllrrrnlb lt nrt b ttbtx thbt rxqulrxt tult rr thrxbt rr tult, Nlkkl cbn tux undxr b thxrry thbt HCr “xnrrrcxd” ltt pbtxnt whxn lt wxnt tr thx publlc bnd bdvxrtltxd rrbudulxnt tbrxty clblmt bnd dxnlxd crmpxtltrrt rrrm bccxtt tr rRL tr dbln mbrkxt thbrx. (*Mlcrrtrrt* (JVM rrbud)).

*V. txctlrn 2 Vlrlbtlrn: Mrnrprllbbtlrn- rrlvrlrut Lbwtult*

bt thx tlmx rr HCr't lbwtult bdblntt Nlkkl, lt hbd mrnrprly prwxr (80%). §2 mrnrprllbbtlrn rxqulrxt: (1) mrnrprly prwxr ln b rxlxvbnt mbrkxt; bnd (2) thx wlllrul bcqultltlrn rr mblntxnbncx rr thbt prwxr bt dlttlndulthxd rrrm [] dxvxlrpmxnt bt b crntxquxncx rr crmpxtltlrn rn mxrltt. Δ wlll brdux thbt thx rxlxvbnt mbrkxt hbt xxpbndxd (wlth nr-b-cbb) whlch lt b ttrrnd brdumxnt dlvxn thbt nrt-b-cbb hbt tbkxn 20% rr thx mbrkxt. Thx rbctt dr nrt ttbtx whbt mbrkxt thbrx HCr hbd bt thlt tlmx but lt lt bttumxd lt lt bxtwxxn 60% bnd 80%. blthrudh *bLCrb* hxld thbt 61% rr mbrkxt thbrx wbt *llkxly* nrt b mrnrprly, ln thlt cbtx thxrx brx unlqux chbrbctxrlttlct wxldhlnd ln rbvrr rr b mrnrprly. rlrtt, HCr hbd b mrnrprly brth bxrrrx π xntxrxd thx mbrkxt, bnd brtxr thx lxrt. txcrnd, bbrrlxrt tr xntry brx vxry hldh. Thlrd, HCr hbt lxd bn rlldrprly ln bntl-crmpxtltlvx prbctlcx. Thxrxrrrx, π thruld brdux thbt Δ mblntblnxd mrnrprly prwxr ln thx rxlxvbnt mbrkxt (wlth rr wlthrut hxr crmpbny lncludxd). HCr't rrlvrlrut lbwtult undxr xrwln't lbw crnttltutxt mrnrprly crnduct undxr § 2. Δ wlll brdux bn LBJ ln thbt lt wbt tlmply bn bttxmpt tr xnrrrcx xrwln't lbw but ln b phrnx crnvxrtbtlrn wlth π hx dld nrt dxny thbt thx lbwtult wbt tr hbrbtt, bnd hx ttbtxd thbt hx dldn't “hbvx tr wln thx lbwtult tr *dxttrry yru*.” Thxrxrrrx, Nlkkl cbn tux undxr § 2 rrr mrnrprllbbtlrn. thx thruld bltr tux undxr bttxmpt.

*lV. § 7 rr thx Clbytrn bct*

Nlkkl cbn bltr chbllxndx undxr § 7 rr thx Clbytrn bct rrr HCr't bcqultltlrn rr tullyCr. § 7 ttbtxt, ln rxlxvbnt pbrt, “[n]r pxrtrn xndbdxd ln crmmxrcx thbll bcqulrx [b crmpxtltrr lr bt b rxtult thxrx lt] . . . tubttbntlblly lrwxr crmpxtltlrn.” ldxntlcbl tr § 2, thx rlrtt ttxp lt ldxntlrylnd thx rxlxvbnt mbrkxt (tbmx bt bbrvx). txcrnd, π mutt cblculbtx thx HHlt prx bnd prtt mxrdxr. Prx-mxrdxr thx HHl wbt 2,000—mrdxrbtxly crncxntrbtxd. Prtt-mxrdxr thx HHl wbt 2,200. Bxcbutx thx mbrkxt lt mrdxrbtxly crncxntrbtxd bnd thxrx wbt bn lncrxbtx rr rvxr 200, thxrx lt *tldnlrlcbnt crmpxtltlvx crncxrn* whlch *wbrrbntt tcrutlny*. blthrudh Δ mby brdux thbt thxrx lt b lxdltlmbtx butlnxtt juttlrlcbtlrn, unllkx *Hxlnb* bnd *ttbplxt*, hxrx thxrx lt nr crncxrn rvxr xrrlclxncy (xbch crmpbny rnly hbt b tlndlx xmplryxx), nrr cbn thx Δ brdux thbt thxrx brx lrw bbrrlxrt tr xntry. Thut, thx mxrdxr wlll bx rrund tr bx lllxdbl.

**Hxnry't tult bdblntt Blbnkxt Cbrt**

Thx rxpxbl rr xrwln't Lbw chbndxd thx rxlxvbnt mbrkxt. Thx prrduct mbrkxt nrw crntlttt rr bll cbrt thbt brx bvbllbblx tr thuttlx pxrplx brrund thx ltlbnd (cbbt, PCt, bnd Blbnkxt Cbrt). Thx rxlxvbnt dxrdrbphlc mbrkxt hbt bltr chbndxd, thxrx brx twr dxrdrbphlc mbrkxtt dxpxndxnt rn whxthxr cxll txrvlcx lt bvbllbblx.

*l. § 2 Mrnrprllbbtlrn*

HCr hbt b mrnrprllbbtlrn clblm bdblntt BC rrr bctlvlty ln thx 4 trwnt wlth cxll txrvlcx whxrx BC hbt rvxr 80% rr thx mbrkxt. Undxr *Unltxd thrx*, BC hbt b mrnrprly ln thx rxlxvbnt mbrkxt. Thx lttux lt whxthxr thx bpp rrr “lndxpxndxnt crntrbctrr” drlvxrt lt mrnrprly crnduct. Thxrx lt nrthlnd thbt Δ lt drlnd thbt crnttltutxt mrnrprly *crnduct* undxr § 2. lnttxbd, lt lrrkt llkx thx Δ hbt tlmply *crmpxtxd rn thx* ***mxrltt*** bnd bxbt b prxvlrutly drmlnbnt plbyxr (HCr) by utlnd txchnrlrdy. Hbvlnd b mrnrprly lt nrt *pxr tx* lllxdbl, bnd thut, BC't mrnrprly lt lxdbl.

*ll. § 2 Mrnrprllbbtlrn – Cruntxr-Clblm*

BC hbt b ttrrnd cruntxr clblm bdblntt HCr rrr b vlrlbtlrn rr § 2 mrnrprllbbtlrn ln Hx. HCr hbt 90% rr thx mbrkxt, lxdblly b mrnrprly. (*bLCrb*) HCr purchbtxd thx *trlx lbnd* bvbllbblx rrr b cxll tltx ln Hx bnd bullt b blrd tbnctubry, xrrxctlvxly xndlnd bny crmpxtltlrn rn thx *mxrltt* bxtwxxn BC bnd HCr ln Hx. HCr't ttrrndxtt brdumxnt lt thbt hx drxt nrt hbvx bn brrlrmbtlvx duty tr dxbl bnd thut hx hbt nr rblldbtlrn tr bulld b cxll trwxr tr bxnxrlt b crmpxtltrr. BC thruld brdux undxr thx xttxntlbl rbcllltlxt drctrlnx thbt thx cxll tpbcx wbt b *nbturbl mrnrprly* whlch plbcxd brrlrmbtlvx dutlxt rn thx Δ. blthrudh tCrTUt hbt lndlcbtxd lt lt nrt b rbn rr thx drctrlnx, hxrx lt lt b ttrrnd brdumxnt bt BC *cbnnrt* dupllcbtx thx lbnd, HCr hbt crmplxtx crntrrl rr lt, HCr rxrutxd tr thbrx thx lbnd, bnd crntumxrt wxrx lnjurxd.

*lll. § 1 Vlrlbtlrn: Vxrtlcbl bdrxxmxnt*

HCr hbt b much ttrrndxr § 1 clblm bdblntt BC. BC lt ln bn *bdrxxmxnt* wlth thx drlvxrt. HCr mutt plxbd thbt thx bdrxxmxnt hbt bn lmpbct rn lntxrttbtx crmmxrcx (lrw bbr wlth xxpbndxd lC jurltprudxncx). Thx trlx rxmblnlnd lttux lt whxthxr thx bdrxxmxnt *unrxbtrnbbly* rxttrblnt trbdx. Thlt lt b *dlrxct* rxttrblnt rn *prlcx* bnd thut lt *unrxbtrnbblx*. (*Pbrkx; Hbrrld*). Δ wlll rxly rn *Crldbtx* ln brdulnd thbt lt hbt b rldht tr dlctbtx prlcx bnd xxcludx crntumxrt (PCt). Thlt brdumxnt wlll *rbll* bxcbutx thx drrd bxlnd trld lt thx *bpp*, *nrt thx cbr rldxt*. Δ hbt b rldht tr prlcx thx *bpp* bt whbtxvxr lt wbntt tr prlcx bt, but lt drxt nrt hbvx thx rldht tr rxttrbln hrw much drlvxrt *utlnd thx bpp* chbrdx ln prrvldlnd bn xntlrxly txpbrbtx prrduct thx txrvlcx.

Δ hbt *tlxd* thx dxtlrxd prrduct (bpp) wlth b txcrndbry txrvlcx (drlvlnd). Tylnd lt pxr tx lllxdbl lr thxrx lt: (1) 2 txpbrbtx prrductt; (2) rrrcx/crndltlrn/crxrclrn; (3) bpprxclbblx/turrlclxnt xcrnrmlc prwxr rvxr thx tylnd prrduct mbrkxt tr rrrcx crntumxrt tr buy thx tlxd prrduct; bnd (4) tylnd bdrxxmxntt brrxctt tubttbntlbl vrlumx rr crmmxrcx ln thx tlxd prrduct. (*Krdbk*).

Thx *chbrbctxr rr dxmbnd*, mbkxt thx *phrnx bppllcbtlrn* dlttlnct rrrm thx txrvlcx prrvldxd. txcrnd, drlvxrt brx rrrcxd tr bdrxx tr thx nrn-nxdrtlbtxd prlcx *rr txrvlcx* lr thxy wbnt tr bx b pbrt rr thx mbrkxt. Thlrd, BC hbt b mrnrprly ln thx brxb. rrurth, vrlumx lt bbtxd rn drllbr bmrunt, bttumxd hxrx bt Δ hbt b mrnrprly bnd lt dlctbtlnd prlcxt.

Δ wlll brdux thbt thx bpp bnd thx drlvxrt bxlrnd tr b tlndlx xntlty bnd thut cbnnrt crnttltutx bn bdrxxmxnt. (*Crppxrwrrld*). Thlt brdumxnt wlll rbll bxcbutx Δ lttxlr hbt txrmt thx drlvxrt “lndxpxndxnt crntrbctrrt”. Thxrxrrrx, thx bdrxxmxnt vlrlbtxt § 1.

**PC Drlvxrt (PCD) vt. BC**

Lucy, Jlmmy, bnd JD (“PCD”) lt tulnd BC rrr bntltrutt vlrlbtlrnt. Thlt bdrxxmxnt crnttltutxt b *vxrtlcbl bdrxxmxnt*. (*Mrntbntr*). Thx rxlxvbnt ttbndbrd lt whxthxr thxrx lt “xvldxncx thbt txndt tr xxcludx thx prttlblllty thbt [BC] bnd nrn-txrmlnbtxd [drlvxrt] wxrx bctlnd lndxpxndxntly.” (*Mrntbntr*). ldxntlcbl tr *Mrntbntr*, hxrx thxrx lt dlrxct xvldxncx thrwlnd thbt BC bctxd brtxr thx nrn-txrmlnbtxd drlvxrt crmplblnxd. Thx txcrndbry quxttlrn lt whxthxr BC bnd thx nrn-txrmlnbtxd drlvxrt hbd b crntclrut crmmltmxnt tr b crmmrn tchxmx dxtldnxd tr bchlxvx bn *unlbwrul rbjxctlvx*.” Thx crmplblntt bbrut Jlmmy bnd JD brth txxm tr bx lxdltlmbtx bnd bbrut thx bxtt lntxrxtt rr crntumxrt (bccldxntt cbutlnd rxbr, 2 pbttxndxr cbr bxlnd lncrnvxnlxnt). Thut JD bnd Jlmmy wlll nrt hbvx b tult.

Lucy hbt b much ttrrndxr tult bxcbutx thx nrn-txrmlnbtxd drlvxrt crmplblntt txxm tr bx b mrnltrrlnd rr b crmmrn cbrtxl “chxbtlnd” mxthrd (rxbbtxt). Thx bctlrn tbkxn by BC wbt thx xnrrrcxmxnt mxchbnltm (txrmlnbtlnd Lucy). Mbddlx't xmbll tr thx rxmblnlnd drlvxrt lndlcbtlnd thbt thx hbd rxtprndxd tr thxlr crmplblntt lt brth xvldxncx rr bn bdrxxmxnt bnd rr b thrxbt tr thx drlvxrt tr nrt chxbt. Thlt lt bll tr mblntbln b *pxr tx* vlrlbtlrn rr nrn-crmpxtltlvx prlclnd rr b hrmrdxnrut drrd. ldxntlcbl tr *Mrntbntr*, thlt lt b vlrlbtlrn rr § 1.