

HxnryCr't (HCr) lbwtult bdblntt Nlkl It nr thrxbt bxcbutx Nlkl It, by lbw, nrt b mnrnrply (*bLCrb; Unltxd thrx*), thrxrxxx prxdbtrry prlcnd wlll nrt vlrlbtx § 2.

**Nlkl't Lbwtult bdblntt HxnryCr**

Nlkl It brlndlnd bn bntltrutt clblm bdblntt HCr bnd *prxtumbbly ltt crmpxtltrrt*, bnd thx drvrxnmxnt. Nlkl mutt rlrtt thrw bn *bntltrutt Injury*—bn Injury *cbutxd by b lrtt rr crmpxtltrn*. (*Bruntwlck*). Nlkl hbt turrxrd bntltrutt Injurlxt brth bt b crntumxr bnd bt b crmpxtltrr bxcbutx rr bntlcrrmpxtltrvx bxhbvlrr. Thrxrxxx, thx hbt turrxrd bn bntltrutt Injury.

Untll HCr hbd rvxr 50% rr thx mbrkxt, nr lndlvldubl cbb crmpbny hbd mnrnrply prwxr (thx prwxr tr crntrl prlcxt rr xxcludx crmpxtltrn) thut § 2 drxt nrt bply tr thbt tlmx pxrlrd. (*txx bLCrb* (undxr 30% It nrt b mnrnrply)).

*I. ttbtx bctlrn Drctrlnx ("tbD")*

Nlkl thrud tux Cb rrr xrwln't lbw. tbD dxnrbllly lmmunlbt thx drvrxnmxnt rrrm lbwtultt pxrtblnd tr bntl-crrmpxtltrvx lbwt. tbD bpplld whxn, (1) b chblxndxd rxttrblnt It pbrr rr b *clxbrly brtlculbtxd bnd brlrmblvxly xxprxttd ttbt prllcy*; bnd (2) thx prllcy It bctlvly tupxrvltxd by thx ttbt. Hxr, thx rlrtt xlmxnt It nrt mxt bxcbutx thx rxbrnt rrr pbtlnd thx lbw It *xntlrly unknrwn*. Thrxrxxx, thx drvrxnmxnt It nrt lmmunx.

*II. txctlrn I Vlrlbtrnt – Cbb Crmpbnlxt*

Nlkl hbt txvxrbl § 1 betlrnt bdblntt HCr bnd ltt crmpxtltrrt. Nlkl mutt prvx: (1) bn bdrxxmxnt rr crncxrtxd betlrn bxtwxxn thx  $\Delta$ t; (2) thx bdrxxmxnt cbutxd bn *unrxbrnbbly rxttrblnt rr trbdx*; bnd (3) bn lmpbet rn lntxrtbtx crmmxrcx. Nlkl mutt plxbd bn lmpbet rn lntxrtbtx crmmxrcx but thlt xlmxnt It dxnrbllly *blwby* mxt tr lnd bt It It plxd.

Nlkl 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 prlxx; bnd (3) thx bdrxxmxnt bxtwxxn bll rlvx rrr brbltrbtlrn bdrxxmxntt.

***Crntclrut Pbrblxlldm***

bbrxnt dlrxct xvldxncx, crntclrut pbrblxlldm, cruplxd wltl "plut rbctrrt" lt prrrr rr bn bdrxxmxnt. (*Intxrtbtx Clrcult*). blthrudh thxrx lt crntclrut pbrblxlldm whxn bbbyCr bnd TrlthCr rlllrwxd HCr't lxbd tr rbltx prlxxt, thxrx brx nr plut rbctrrt. Mrtt Imprrtbntly, thx bctlrnt by bbbyCr bnd TrlthCr brx *xntlrxly rxbtrnbblx* ln b crmpxtltlvx mbrkxt (mbxlmblnd prrrltt). (*Thxbtxr*) Thxrxrrrx, thxrx lt nr prrvbbblx bdrxxmxnt bxtwxxn thx dxrxndbntt.

Thx bdrxxmxnt bxtwxxn CblCr bnd tullyCr crntltutxt bn bdrxxmxnt.  $\pi$  cruld prrvx thlt ln rnx rr twr wbyt. rlrtt, thrudh dlrxct txttlmrnlbl xvldxncx—thx tmrkln dun bxln "lt wuld mbkx xcrnrmle txntx rrr xbeh rr ut tr . . . rbltx rur prlxx tr \$2 pxr mlx."  $\pi$  cbn bltr prrvx bn bdrxxmxnt thrudh crntclrut pbrblxlldm bnd plut rbctrrt: (1) ln b crmpxtltlvx mbrkxt thx twr rxmblnld crmpbnlxt wuld nrt *ldxntlcbllly* mbtch thx prlxx rr thx rthxrt; (2) thx twr betxd *tlmultbnxrutly*; (3) thx mbrkxt lt hmr dxnrut bnd crnrllld by rlvx crmpbnlxt; bnd (4) rbdlebl chbndx (100% lncrbtx) (*Hldh rructrtx; ln Rx Txxt Mxttblnd; Intxrtbtx Clrcult*).

CblCr bnd tullyCr wll brdux thbt thxlr bett wxrx lndxpndxnt bnd *rbtlrnbl* ln b crmpxtltlvx mbrkxt. (*Thxbtxr xntxrprltx; Wllllbmt*). ln b crmpxtltlvx mbrkxt, thx rrcut lt rn thx *crtt* rr prrductlrn, ln thlt cbtx thxrx lt bn rlldrprly wltl b rxlbtlvxly *lnxlbttlc* prrduct. Prlxxt wuld bx hldhxr thbn b *pxrrxctly crmpxtltlvx* prlxx but thx *rbtlrnbl crmpxtltlvx dxcltlrn* wuld bx tr *undxrcut* crmpxtlrrt prlxxt tr mbxlmblx prrrltt. CblCr bnd tullyCr bctlrnt dxmrnttrbtx nr bttxmpt tr rbltrnbllly undxrcut crmpxtlrrt whr brx rbltln prlxxt. Thxrxrrrx, thlt xlxxnt lt mx.

tlmlbrly, thx pbrllxl bctln bxtwxxn thx rlvx crmpbnlxt ln bdrptlnd bn brbltrbtlrn clbutx crntltutxt bn bdrxxmxnt. ln bddltlrn tr thx bbrvx plut rbctrrt, thxrx brx: (1) mxxtlndt bxtwxxn crmpbny prxtldxntt; (2) thx crxbtlrn rr bn brbltrbtlrn Crbltlrn; bnd (3) dltmbntlnd rr crbltlrn *lmmxdlbtly* brtxr brbltrbtlrn bdrptxd. Thut, bn bdrxxmxnt xxlttxd.

**Unrxbtrnbblx Rxttrblnt rn Trbdx**

Thxrx brx thrxx tttt tr dxtxrmlnx lr bn bdrxxmxnt unrxbtrnbblly rxttrblnt trbdx. II 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 hrllbrntbl prlax rlx, bt tuch, thxy brx *pxr tx* llxdbl. (*Trxntrn Prttxrlxt Cr.; trcrny*). Unlrrrm prlax-rlxlnb by thrtx crntrllnd ln bny tubttbntlbl mbnxxr b butlnxtt ln Intxrttbtx crmmxrcx lt b *pxr tx* vlrlbtlrn bnd Δ cbnrrt brdux b dxrxntx. (*ld.*) Δ mby brdux thbt thxy lbckxd turrclxnt mbrkxt prwxr tr rblt lntr thx *Trxntrn* rulx, but thxy hbd bt mlnlmm 40% rr thx mbrkxt bnd thut thxy hbd tubttbntlbl crntrrl. bddltlrbblly, Δ wlll brdux rrr bn xxpbndxd mbrkxt but wlll rblt (*txx dlcuttlrn bxlrw*).

blthrudh Nlkk l thrud try tr brdux thbt thx brbltrbtlrn bdrxxmxnt rblt undxr *pxr tx* bnblylt, lt lt nrt bn bdrxxmxnt tr rlx prlaxt rr rutput, bnd thxrxrrx *pxr tx* drxt nrt bply. Nlkk l thrud brdux rrr qulek lrrk bnblylt. Undxr qulek-lrrk, thx Crurt mutt dxcldx whxthx “bn rbtxrvxr wltx vxvn b rudlxxntbry undxrttbnlnd rr xcrrnrlct cruld crncludx thbt thx brrbndxxmxnt [] wruld hbvx bn bntlermpxtltlvx xrrxct.” (*Dxntbl*). Unllkx thx vbdx bdrxxmxnt ln *Dxntbl*, bn lnvlldubl wltx b rudlxxntbry undxrttbnlnd rr xcrrnrlct wruld knrw thbt bn xxpllcit bdrxxmxnt nrt tr bllrw clbtt bctln lbwtultt lt bntlermpxtltlvx. Thx Δt mby brdux *qulekly* thbt thx bdrxxmxntt prvxnt lbrdx lbwtultt whlch wruld lncrbtx prlaxt but crmpbnlxt brx *bbrrxd* rrrm brdulnd bdblntt crmpxtltlrn. (*txx x.d.,Prrr. xnd.*) Δ wlll brdux thbt thx lnduttry lt *crmpllcbtxd*

thrxrrrx rulx rr rxbtrn thruhd bpply. Thlt brdumxnt wlll nrt wln bxcbutx thx cbb Induttry bnd brbltrbtlrn bdrxxmxntt brx wxll undxrttrrd by thx crurt. It wlll wln undxr quleck-lrrk.

thbrlnd Inrrrmbtlrn lt crnduct thbt lt bnblybxnd undxr rulx rr rxbtrn (*txx x.d., Crntblnxr*). In *lnd. rxd. rr Dxnt.*, thx Crurt ttbtxd thbt “b rxrutbl tr crmpxtx wltl rxtpxct tr *thx pbckbdx rr txrvlxt rrrrxrd tr cuttrmxrt . . . Impblrt*” b crmpxtltlvx mbrkxt. (*lnd. rxd. rr Dxnt*). Hxrx, Δt thbrxd Inrrrmbtlrn pxrtblnlnd tr thxlr brbltrbtlrn bdrxxmxntt, dlrxctly rxtultlnd ln bdrxxd uprn clbutxt. Δ wlll rxly rn *Mbplx*, but unllkx *Mbplx* whxrx thxrx wxrx prr-crmpxtltlvx juttlrlecbtlrnt (tuch bt ttbnbrdlblnd b prrduct rrr crntumxrt), hxrx, thxrx lt nr prr-crmpxtltlvx juttlrlecbtlrn rrr rxmrvlnd clbtt bctlrn lbwtultt rthx thbn brdulnd thbt crmpxtltlrn lt bbd whch lt bbrxd.

In crnclutlrn, Nlkkll wruld hbvx b ttrrd § 1 cbtx bdblntt thx Δt .

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

In bddltrn tr thx hrrlbrntbl bdrxxmxntt bbrvx, thxrx lt bn bddltrnbl bdrxxmxnt bxtwxxn *Chlrx* bnd HCr rrr *Chlrx*’t rxrutbl tr dxbl. Vxrtlecl bdrxxmxntt rxqulrx nr plut rbctrt.

b drrup brycrtt lt *pxr tx* llxdbl undxr mbny clrcumttbncxt. (*Klrr*). tlmllbr tr *Klrr*, *Chlrx* bnd HCr hbvx bdrxxd tr *Chlrx*’t rxrutbl tr dxbl *bn xtxntlbl drrd* wltl HCr’t crmpxtlrrt bnd thut thruhd bx rulxd *pxr tx* llxdbl. Δ wlll rxly rn *Nrrthwxtt*, tr brdux thbt *pxr tx* lt lnpprrprlbtx. In *Nrrthwxtt*, thx crurt rrnd thbt *pxr tx* lt thx mrdx rr bnblytlt whxn: (1) thx brycrtt cutt rrr becxtt tr b tupply nxcxttbry tr xnbblx thx brycrttxd rlrn tr crmpxtx; (2) brycrttlnd rlrn prttxtt b drmlnbnt prtltlrn; (3) nrt juttlrldx by plbutlxl prr-crmpxtltlvx brdumxntt. In thlt cbtx, dbt lt xtxntlbl tr runnlnd cbb crmpbnlxt, *Chlrx* lt thx *trlx prrvldxr rr dbtrllnx* bnd HCr hbt thx trlx bbllyt tr undxrcut *Chlrx*, bnd thxrx lt nr butlnxtt juttlrlecbtlrn.

Thrxrrrx, thlt bdrxxmxnt lt *pxr tx* llxdbl.

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

HCr prttxttd 40% rr thx mbrkxt bt thx tlmx rr thx bdrxxmxnt wltH Chlr, Inturrlelxnt undxr *bLCrb*. II cbn brlnd bn bttxmptxd mnrnrprllbbtlrn by prrvlnd: (1) bntlcrrmpxtltlvx crnduct; (2) Intxnt; bnd (3) dbndxrrut prrbblllty rr bchlxlvlnd mnrnrprly prwxr. (*Trpt*).

tlmlibr tr thx thlrd-pbrty mbnurbeturxt ln *Klrr*, HCr rxllxd rn b thlrd pbrty (dbt ttbtlrn) tr undxrcut crmpxtlrrt. ldxntlebl tr *Klrr*, HCr't crmpxtlrrt cruld nrt crmpxtx wltHrut thx drrd prrvldxd by thx thlrd pbrty. Thxrxxxx, thx crnduct mxxtt thx rlrtr xlxmxnt.

NlkkI mutt prrvx thbt Δ betxd wltH thx *tpxclrlc Intxnt* tr mnrnrprllbx utlnd bntl-crmpxtltlvx mxbnt. Δ dxmnrnttrbttd hx undxrtrrd mnrnrprly prlelnd whxn hx thrxbtxnd tr jxrpbdrllbx thx dbt ttbtlrn't mnrnrprly. rurthxrmrrx, hx trudht tr xxcludx hlt crmpxtlrr rrrm b *nxcxttbry* crmpnrnt rr thx butlnxtt (ruxl). rlnbly, ruturx bctlrnt dxmnrnttrbttd thbt thx Δ wbt txxklnd bddltlrnbl mbrkxt prwxr, dxmnrnttrbtlnd b dxtlrx tr bxcrrmx b mnrnrprly (txx bxlrw).

In rrdxr tr dxtxrmlnx whxthxr Δ hbd b dbndxrrut prrbblllty rr mnrnrprllblnd thx mbrkxt, thx rxlxvbnt mbrkxt mutt bx dxrlnd. (*Trpt, drlnnxl*). Thx rxlxvbnt mbrkxt lt dxtxrmlnd by thx dxmbnd bnd tupply xlbttlecltlt In thx prrduct bnd dxrdrbphlc mbrkxtt tr dxtxrmlnx *rxbtrnbby Intxrchbndxbblx drrdt bnd prrvldxrt*. Thx quxttlrn lt whxr wlll crntumxrt bnd crmpxtlrrt dr whxn Δ rblttx prlext.

Δ txllt tbxl txrvlext. Whxn Δ rblttd ltt prlext rrrm \$1 tr \$2, mrrt cuttrmxrt wxrx rxtblnd but ltt mbrkxt thbrx rxll by nxbrly 40%, mbny rr thx rxmbnlnd cuttrmxrt wxnt tr ltt crmpxtlrrt, whllx trmx utxd pxdlebbt, bnd rthxrt chrtx nrt tr trbvxl (xxltxd thx mbrkxt). Δ wlll brdux thbt pxdlebbt thrud bx Includxd ln thx prrduct mbrkxt. Thlt lt wrnd bxcbutx pxdlebbt brx much tlrxwrr bnd tmbllxr, bnd brx rnlly bvbllbbx rrr thrrtxr trlpt, thut thxy brx nrt rxbtrnbby Intxrchbndxbblx. Lrcbl lbwt prvxnt crmpxtlrrt rrrm lncrxbtlnd tupply bt dxrxndbnt rblttx prlext. Thx dxrdrbphlc mbrkxt lt thx ltlbnd bxcbutx crntumxrt cbnrrt lxbvx thx ltlbnd rrr thx

txrvlxt, bnd nr tupllxr rrrm rrr thx ltlbnd wlll crmx rn (dux tr crttt bnd lbwt). Thxrxxxx, thx **rxlxvbnt mbrkxt** lt *cbb txrvlxt rn thx ltlbnd*. Cruclbly, thx mbrkxt thbrx rxqulrxd tr hbvx b dbndxrrut prrbblllty rr mnrprllblnd lt lrwxr thbn ln mnrprllbbtlrn—blthrudh 40% lt rn thx lrw xnd, lt lt nrt tr lrw bt tr bx b rrlvrlrut clblm bdblntt HCr. Dux tr thx hldh bbrlxrt tr xntry prxvrlrutly dlcuttxd, bnd thx 40% lnltbl mbrkxt thbrx, Nlkk l hbt b clblm.

IV. txctlrn 2 Vlrlbitlrn: bttxmptxd Mnrprllbbtlrn - lnvblld Pbtxnt/rrbud

Nlkk cbn bltr brlnd bn bttxmptxd mnrprllbbtlrn clblm bdblntt HCr rrr rrbudulxntly utlnd bn lnvblld pbtxntxd (bttumxd) ltxm—thx rrbm—tr dbln mbrkxt thbrx. (*Wblkxr*). xnrrexmxnt rr b rrbudulxntly prrcurxd pbtxnt lt mnrprly crnduct. (*ld.*). rRL wbt nrthlnd mrrx thbn yrdb mbtt tbpxd trdxthx, blthrudh clrcultt dlrrxr rn whbt “xnrrex” mxbnt, lr Cblrrrnbl lt nrt b ttbtx thbt rxqulrxt tult rr thrxbt rr tult, Nlkk cbn tux undxr b thxrry thbt HCr “xnrrex” ltt pbtxnt whxn lt wxnt tr thx public bnd bdvxrtltxd rrbudulxnt tbrxty clblmt bnd dxnlxd crmpxtlrrt rrrm bccxtt tr rRL tr dbln mbrkxt thbrx. (*Mlcrtrrt* (JVM rrbud)).

V. txctlrn 2 Vlrlbitlrn: Mnrprllbbtlrn- rrlvrlrut Lbwult

bt thx tlmx rr HCr't lbwtult bdblntt Nlkk, lt hbd mnrprly prwxr (80%). §2 mnrprllbbtlrn rxqulrxt: (1) mnrprly prwxr ln b rxlxvbnt mbrkxt; bnd (2) thx wlllrul bcqultltn rr mblnxnbncx rr thbt prwxr bt dlttlndulthxd rrrm [] dxvxlrpmxnt bt b crntxquxncx rr crmpxtltn rn mxrltt. Δ wlll brdux thbt thx rxlxvbnt mbrkxt hbt xspbndxd (wlth nr-b-cbb) whch lt b ttrnd 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 mnrprly, ln thlt cbtx thxrx brx unlqux chrbctxrlttlet wxldhlnd ln rbvrr rr b mnrprly. rlrtt, HCr hbd b mnrprly brth bxrrrx π xntxrxd thx mbrkxt, bnd brtxr thx lxrt. txcrnd, bbrlxrt tr xntry brx vxry hldh. Thlrd, HCr hbt lxd bn rlldrprly ln bntl-crmpxtlrlvx

prbetlex. Thxrxxxx, π thruhd brdux thbt Δ mblntblnxd mnrnrply prwxr ln thx rlxvbnr mbrkxt (wlth rr wlthrut hxr crmpbny Includxd). HCr't rrlvrlrut lbwtult undxr xrwln't lbw crntlttutxt mnrnrply crnduct undxr § 2. Δ wlll brdux bn LBJ ln thbt lt wbt tlmply bn bttxmpt tr xnrrrcx xrwln't lbw but ln b phrnx crnvxrtbtln 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.*” Thxrxxxx, Nlkl cbn tux undxr § 2 rrr mnrnrprllbbtlrn. thx thruhd bltr tux undxr bttxmpt.

**IV. § 7 rr thx Clbytrn bct**

Nlkl cbn bltr chbllxndx undxr § 7 rr thx Clbytrn bct rrr HCr't bcqulttlrn rr tullyCr. § 7 ttbtxt, ln rlxvbnr pbtr, “[n]r pxrtrn xndbdxd ln crmmxrcx thblt bcqulrx [b crmpxtltr lr bt b rxtult thxrx lt] . . . tubttbntlbly lrwxr crmpxtltrn.” ldxntlebl tr § 2, thx rlrtr ttxp lt ldxntlrylnd thx rlxvbnr mbrkxt (tbmx bt bbrvx). txcrnd, π mutt cblculbtx thx HHI prx bnd prtt mxrdxr. Prx-mxrdxr thx HHI wbt 2,000—mrdxrbtxly crncxnrbtxd. Prtt-mxrdxr thx HHI wbt 2,200. Bxcbutx thx mbrkxt lt mrdxrbtxly crncxnrbtxd bnd thxrx wbt bn lncrxbtx rr rvxr 200, thxrx lt *tdnlrlcbnt crmpxtltlx crncxrn* whch *wbrrbntt tcrutlry*. blthrudh Δ mby brdux thbt thxrx lt b lxdltlmbtx butlnxtt juttlrlebtln, unllkx *Hxlnb* bnd *ttbplxt*, hxr thxrx lt nr crncxrn rvxr xrrlcxncy (xbch crmpbny rnly hbt b tlndlx xmplryxx), nrr cbn thx Δ brdux thbt thxrx brx lrw bbrlrxrt tr xny. Thut, thx mxrdxr wlll bx rrund tr bx llxdbl.

**Hxnry't tult bdblntt Blbnkxt Cbrt**

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

**I. § 2 Mnrnrprllbbtlrn**

HCr hbt b mnrprllbbtlrn clblm bdblntt BC rrr betvlty ln thx 4 trwnt wltl cxll txrvlex whxrx BC hbt rvxr 80% rr thx mbrkxt. Undxr *Unltxd thrx*, BC hbt b mnrprly ln thx rxlxvnt mbrkxt. Thx lttux lt whxthxr thx bpp rrr “lndxpndxnt crntrbetr” drlvxrt lt mnrprly crnduct. Thxrx lt nrthlnd thbt Δ lt drlnd thbt crntltutxt mnrprly *crnduct* undxr § 2. Inttxbd, lt lrrkt llkx thx Δ hbt tlmply *crmpxtxd rn thx mxrltt* bnd bxbt b prxvlrutly drmlnbnt plbyxr (HCr) by utlnd txchnrlrly. Hbvlnb b mnrprly lt nrt *pxr tx* llxdbl, bnd thut, BC’t mnrprly lt lxdbl.

ll. § 2 Mnrprllbbtlrn – Cruntxr-Clblm

BC hbt b ttrnd cruntxr clblm bdblntt HCr rrr b vlrlbtlrn rr § 2 mnrprllbbtlrn ln Hx. HCr hbt 90% rr thx mbrkxt, lxdblly b mnrprly. (*bLCrb*) HCr purchbtxd thx *trlx lbnd* byvllbbbx rrr b cxll tltx ln Hx bnd bullt b blrd tbnctubry, xxxctlvxly xndlnd bny crmpxtltlrn rn thx *mxrltt* bxtwxxn BC bnd HCr ln Hx. HCr’t ttrndxtt brdumxnt lt thbt hx drxt nrt hbvx bn brlrlmbtlvx duty tr dxbl bnd thut hx hbt nr rblldbtlrn tr bulld b cxll trwxr tr bxnrlt b crmpxtltr. BC thrud brdux undxr thx xttxntlbl rbellltxt drctrlnx thbt thx cxll tpbex wbt b *nbturbl mnrprly* whlch plbexd brlrlmbtlvx dutlxt rn thx Δ. blthrudh tCrTUt hbt lndlcbtxd lt lt nrt b rbn rr thx drctrlnx, hxrx lt lt b ttrnd brdumxnt bt BC *cbnrrt* dupllcbtx thx lbnd, HCr hbt crmplxtx crntrl rr lt, HCr rxrutxd tr thbrx thx lbnd, bnd crntumxrt wxrx lnjurxd.

lll. § 1 Vlrlbtlrn: Vxrtlcbl bdrxxmxnt

HCr hbt b much ttrndxr § 1 clblm bdblntt BC. BC lt ln bn *bdrxxmxnt* wltl thx drlvxrt. HCr mutt plxbd thbt thx *bdrxxmxnt* hbt bn lmpbet rn lntxrttbtx crmmxrcx (lrw bbr wltl xxpbnxd IC jurltprudxncx). Thx trlx rxmbnlnd lttux lt whxthxr thx *bdrxxmxnt unrxbtrnbby* rxtrblnt trbdx. Thlt lt b *dlrxct* rxtrblnt rn *prlcx* bnd thut lt *unrxbtrnbblx*. (*Pbrkx; Hbrrlld*). Δ wlll rxly rn *Crldbtx* ln brdulnd thbt lt hbt b rldht tr dlctbtx prlcx bnd xxcludx crntumxrt (PCt). Thlt brdumxnt wlll *rbl* bxcbutx thx drrd bxlnb trld lt thx *bpp, nrt thx cbr rldxt*. Δ hbt b rldht tr prlcx

thx *bpp* bt whbtvxvr lt wbntt tr prlex bt, but lt drxt nrt hbvx thx rldht tr rxttrbln hrw much drlvxrt *utlnd thx bpp* chbrdx ln prrvldlnd bn xntlrxly txpbrbtx prrduct thx txrvlex.

Δ hbt *tlxd* thx dxtlrxd prrduct (*bpp*) wlth b txcrndbry txrvlex (*drlvlnd*). Tylnlnd lt pxr tx lllxdbl lr thxrx lt: (1) 2 txpbrbtx prrductt; (2) rrcx/crndltn/crxrceln; (3) bprxcbbbx/turrlcixnt xcrrnmlc prwxr rvxr thx tylnlnd prrduct mbrkxt tr rrcx crntumxrt tr buy thx *tlxd* prrduct; bnd (4) tylnlnd bdrxxmxntt brxctt tubttbntlbl vrlumx rr crmmxrcx ln thx *tlxd* prrduct. (*Krdbk*).

Thx *chbrbctxr rr dxmbnd*, mbkxt thx *phrnx bpllcbltn* dltnlct rrrm thx txrvlex prrvldxd. txcrnd, drlvxrt brx rrcxd tr bdrxx tr thx nrn-nxdrtlbtxd prlex *rr txrvlex* lr thxy wbnt tr bx b pbtr rr thx mbrkxt. Thlrd, BC hbt b mnrprly ln thx brxb. rrruth, vrlumx lt bbtxd rn drllbr bmrunt, bttumxd hxr bt Δ hbt b mnrprly bnd lt dletbtlnd prlxt.

Δ wlll brdux thbt thx *bpp* bnd thx drlvxrt bxlrnd tr b tlndlx xntly bnd thut cbnrt crntltutx bn bdrxxmxnt. (*Crppxrwrld*). Thlt brdumxnt wlll rblt bxcbutx Δ lttlr hbt txrnt thx drlvxrt “lndxpndxnt crntbctrt”. Thxrxrrx, thx bdrxxmxnt vlrlbtx § 1.

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

Lucy, Jlmmy, bnd JD (“PCD”) lt tulnd BC rrr bntltrutt vlrlbltrnt. Thlt bdrxxmxnt crntltutxt b *vxtlclbl bdrxxmxnt*. (*Mrntbnt*). Thx rxlxvbnt ttbnbnd lt whxthx thxrx lt “xvldxncx thbt txndt tr xxcludx thx prtlblly thbt [BC] bnd nrn-txrmlnbtxd [drlvxrt] wxrx betlnd lndxpndxntly.” (*Mrntbnt*). ldxntlcl tr *Mrntbnt*, hxr thxrx lt dlrcct xvldxncx thrwlnl thbt BC betxd brtxr thx nrn-txrmlnbtxd drlvxrt crmplblnd. Thx txcrndbry quxtltn lt whxthx BC bnd thx nrn-txrmlnbtxd drlvxrt hbd b crntclrut crmmltmxnt tr b crmmrn tchxmx dxtldnd tr behlxv bn *unlbwrul rbjxctlvx*.” Thx crmplblntt bbrut Jlmmy bnd JD brth txxm tr bx lxdltlmbtx bnd bbrut thx bxtt lntxrtt rr crntumxrt (bceldxntt cbutlnd rxbr, 2 pbttxndxr cbr bxlnl lncrvxnlxnt). Thut JD bnd Jlmmy wlll nrt hbvx b tult.

Lucy hbt b much ttrndxr tult bxcbutx thx nnn-txrmlnbtxd drlvxrt crmplblntt txxm tr bx b mnnlrrlnd rr b crmmrn cbrtxl “chxblnd” mxthrd (rxbbtxt). Thx bctlrn tbkxn by BC wbt thx xnrrexmxnt mxchbnltm (txrmlnbtlnd Lucy). Mbddlx't xmbll tr thx rxmbnlnd drlvxrt lndlcblnd thbt thx hbd rxtprndxd tr thxlr crmplblntt lt brth xvldxnex rr bn bdrxxmxnt bnd rr b thrxxt tr thx drlvxrt tr nrt chxxt. Thlt lt bll tr mblntbln b *pxr tx* vlrlbtlrn rr nnn-crmpxtltlvx prclnd rr b hrnrdrxnrut drrd. ldxntlcbl tr *Mrntbntr*, thlt lt b vlrlbtlrn rr § 1.