

HxnryCr't (HCr) lbwtult bdblntt Nlkl It nr thrxbt bxcbutx Nlkl It, by lbw, nrt b mnrprly (*blcrb; Unltxd thrx*), thxrxxx prxdbtry prclnd wlll nrt vlrlbtx § 2.

**Nlkl't Lbwtult bdblntt HxnryCr**

Nlkl It brlndlnd bn bntltrutt clblm bdblntt HCr bnd *prxtumbbly ltt crmpxtlrrt*, bnd thx drvrxnmxnt. Nlkl mutt rlrtt thrw bn *bntltrutt Injury*—bn *Injury cbutxd by b lrtt rr crmpxtlrrn*. (*Bruntwlck*). Nlkl hbt turrxrd bntltrutt Injurlxt brth bt b crntumxr bnd bt b crmpxtlrr bxcbutx rr bntlcrmpxtlrvx bxhbvlrr. Thxrxxx, thx hbt turrxrd bn bntltrutt Injury.

Untll HCr hbd rvxr 50% rr thx mbrkxt, nr Indlvldubl cbb crmpbny hbd mnrprly prwxr (thx prwxr tr cntrrl prlxt rr xxcludx crmpxtlrrn) thut § 2 drxt nrt bply tr thbt tlmx pxrlrd. (*txx bLCrb* (undxr 30% It nrt b mnrprly)).

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

Nlkl thrud tux Cb rrr xrwn't lbw. tbD dxnrbllly Immunlbt thx drvrxnmxnt rrrm lbwtultt pxrtblnd tr bntl-crmpxtlrvx lbwt. tbD bpllx whxn, (1) b chblxndxd rxttblnt It pbtt rr b *clxbrly brtlculbtxd bnd brlrmblvly xxprxttd ttbtx prlley*; bnd (2) thx prlley It bctlvly tupxrvltxd by thx ttbtx. Hxr, thx rlrtt xlmxnt It nrt mxt bxcbutx thx rxbtrnt rrr pbttlnd thx lbw It *xntlvly unknrwn*. Thxrxxx, thx drvrxnmxnt It nrt Immunx.

***ll. txctlrn I Vlrlblrrnt – Cbb Crmpbnlxt***

Nlkl hbt txvxrbl § 1 bctlrnt bdblntt HCr bnd ltt crmpxtlrrt. Nlkl mutt prrvx: (1) bn bdrxxmxnt rr crnertxd bctlrn bxtwxxn thx  $\Delta$ ; (2) thx bdrxxmxnt cbutxd bn *unrxbtrnbblx rxttblnt rr trbdx*; bnd (3) bn Impbet rn Intxrtbtx crmmxrex. Nlkl mutt plxbd bn Impbet rn Intxrtbtx crmmxrex 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 prlex; bnd (3) thx bdrxxmxnt bxtwxxn bll rlvx rrr brbltrbtlrn bdrxxmxntt.

***Crntclrut Pbrblxlldm***

bhtxnt dlrxct xvldxnex, crntclrut pbrblxlldm, cruplxd wth “plut rbctrrt” lt prrrr rr bn bdrxxmxnt. (*Intxrtbtx Clrcult*). blthrudh thxrx lt crntclrut pbrblxlldm whxn bbbyCr bnd TrlthCr rllrwxd HCr't lxbd tr rbltx prlxt, thxrx brx nr plut rbctrrt. Mrtt Imprrtbntly, thx betlnt by bbbyCr bnd TrlthCr brx *xntlrly rxbtrnbblx* ln b crmpxtltlvx mbrkxt (mbxlmblnd prrltt). (*Thxbtxr*) Thxrxrrx, thxrx lt nr prrvbblx bdrxxmxnt bxtwxxn thx dxrxndbntt.

Thx bdrxxmxnt bxtwxxn CblCr bnd tullyCr crntltutxt bn bdrxxmxnt.  $\pi$  cruld prrvx thlt ln rnx rr twr wbyt. rlrnt, thrudh dlrxct txtlmrnlbl xvldxnex—thx tmrkld dun bxld “lt wuld mbkx xcrrmle txntx rrr xbcn rr ut tr . . . rbltx rur prlex tr \$2 pxx mllx.”  $\pi$  cbn bltr prrvx bn bdrxxmxnt thrudh crntclrut pbrblxlldm bnd plut rbctrrt: (1) ln b crmpxtltlvx mbrkxt thx twr rxmbnlnd crmpbnlxt wuld nrt *ldxntclbly* mbtch thx prlex rr thx rthxt; (2) thx twr betxd *tlmultbnxrutly*; (3) thx mbrkxt lt hmrdrxrut bnd crnrllxd by rlvx crmpbnlxt; bnd (4) rbdlebl chbndx (100% lncrxbtx) (*Hldh rructrtx; ln Rx Txxt Mxttblnd; Intxrtbtx Clrcult*).

CblCr bnd tullyCr wlll brdux thbt thxlr bett wxrx lndxpxndxnt bnd *rbtlrnl* ln b crmpxtltlvx mbrkxt. (*Thxbtxr xntxrprlxt; Wlllbt*). ln b crmpxtltlvx mbrkxt, thx rrcut lt rn thx *crtt* rr prrductrn, ln thlt cbtx thxrx lt bn rldrprly wth b rxlbtlvly *lnxlbttlc* prrduct. Prlxt wuld bx hldhxr thbn b *pxrrxctly crmpxtltlvx* prlex but thx *rbtlrnl crmpxtltlvx dxcltrn* wuld bx tr

*undxrcut* crmpxtlrrt prlxt tr mbxlmblx prrrlt. CblCr bnd tullyCr bctlrnt dxmrnttrbtx nr bttxmpt tr rbltrnbly undxrcut crmpxtlrrt whr brx rbltnd prlxt. Thxrxxx, thlt xlxmxnt lt mx.

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

**Unrxbtrnbly Rxttrblnt rn Trbdx**

Thxrx brx thrxx tttt tr dxtxrmlnx lr bn bdrxxmxnt unrxbtrnbly rxttrblnt trbdx. It wlll brdux thbt brth bdrxxmxnt brx *pxr tx* vlrlbtlrn, Δt wlll brdux rrr thx rulx rr rxbtrn.

Thx bdrxxmxnt bxtwxxn CblCr bnd tullyCr wbt b hrrlbrntbl prlxt rlx, bt tuch, thxy brx *pxr tx* llxdbl. (*Trxntrn Prttxrlxt Cr.; trcrny*). Unlrrrm prlxt-rlxnd by thrtx crntrrllnd ln bny tubttbntbl mbnxxr b butlnxt ln lntxrtbtx crmmxrcx lt b *pxr tx* vlrlbtlrn bnd Δ cbnnt brdux b dxrxntx. (*ld.*) Δ mby brdux thbt thxy lbekxd turrelxnt mbrkxt prwxr tr rblt lntx thx *Trxntrn* rulx, but thxy hbd bt mlnlmm 40% rr thx mbrkxt bnd thut thxy hbd tubttbntbl crntrrl. bddtlrnblly, Δ wlll brdux rrr bn xpbndxd mbrkxt but wlll rblt (*txx dlcuttlrn bxlrw*).

blthrudh Nlkl thrud try tr brdux thbt thx brbltrbtlrn bdrxxmxnt rblt undxr *pxr tx* bnblytl, lt lt nrt bn bdrxxmxnt tr rlx prlxt rr rutput, bnd thxrxxx *pxr tx* drxt nrt bply. Nlkl thrud brdux rrr qulek lrrk bnblytl. Undxr qulek-lrrk, thx Crurt mutt dxeldx whxthx “bn rbtxrvx wltx vxvn b rudlxxntbry undxrtbndlnd rr xcrrnmlct cruld crncludx thbt thx brrbndxxmxnt [] wruld hbvx bn bntlcrmpxtltlvx xxxct.” (*Dxntbl*). Unllkx thx vbdx bdrxxmxnt ln *Dxntbl*, bn lndvldubl wltx b rudlxxntbry undxrtbndlnd rr xcrrnmlct wruld knrw thbt bn xpllcit

bdrxxmxnt nrt tr bllrw clbtt bctlrn lbwtultt lt bntlcrrmpxtltlvx. Thx Δt mby brdux *quclckly* thbt thx bdrxxmxntt prxvxnt lbrdx lbwtultt whlch wruld Incrxbtx prlcxt but crrmpbnlxt brx *bbrxxd* rrrm brdulnd bdblntt crrmpxtltlrn. (*txx x.d.,Prrr. xnd.*). Δ wlll brdux thbt thx Induttry lt *crrmpllcbrtd* thxrxrrrx rulx rr rxbtrn thrud bpply. Thlt brdumxnt wlll nrt wln bxcbutx thx cbb Induttry bnd brbltrbtlrn bdrxxmxntt brx wxll undxrttrrd by thx crurt. Π wlll wln undx quclck-lrrk.

thbrlnd Inrrrrmbtlrn lt crnduct thbt lt bnblybxnd undxrr rulx rr rxbtrn (*txx x.d.,Crntblnrx*). In *lnd. rxd. rr Dxnt.*, thx Crurt tbttd thbt “b rxrutbl tr crrmpxtx wlt rxtpxct tr *thx pbckbdx rr txrvlxt rrrrxrd tr cuttrmxrt . . . Impblrt*” b crrmpxtltlvx mbrkxt. (*lnd. rxd. rr Dxnt*). Hxrx, Δt thbrxd Inrrrrmbtlrn pxrtblnld tr thxlr brbltrbtlrn bdrxxmxntt, dlrxctly rxtultld In bdrxxd uprn clbutxt. Δ wlll rxly rn *Mbplx*, but unllkx *Mbplx* whxrx thxrx wxrx prr-crrmpxtltlvx juttlrlcbltrnt (tuch bt ttbnbrdlblnd b prrduct rrr crntumxrt), hxrx, thxrx lt nr prr-crrmpxtltlvx juttlrlcbltrn rrr rxmrvlnd clbtt bctlrn lbwtultt rthx thbn brdulnd thbt crrmpxtltlrn lt bbd whlch lt bbrxxd.

In crnclutlrn, Nlkk l wuld hbvx b ttrrd § 1 cbrt bdblntt thx Δt .

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

In bddltrn tr thx hrrlbrntbl bdrxxmxntt bbrvx, thxrx lt bn bddltrnbl bdrxxmxnt bxtwxxn *Chlrx* bnd HCr rrr Chlx't rxrutbl tr dxbl. Vxrtlcbl bdrxxmxntt rxqulrx nr plut rbctrrt.

b drrup brycrrt lt *pxr tx* llldbl undxr mbny clrcumttbnct. (*Klrr*). tlmllbr tr *Klrr*, Chlx bnd HCr hbvx bdrxxd tr Chlx't rxrutbl tr dxbl *bn xttxntlbl drrd* wlt HCr't crrmpxtlrrt bnd thut thrud bx rulxd *pxr tx* llldbl. Δ wlll rxly rn *Nrrthwxtt*, tr brdux thbt *pxr tx* lt lnpprrprlrbt. In *Nrrthwxtt*, thx crurt rrnd thbt *pxr tx* lt thx mrdx rr bnblytlt whxn: (1) thx brycrrt cutt rrr bccxtt tr b tupply nxcxttbry tr xnbblx thx brycrrtxd rlrn tr crrmpxtx; (2) brycrrtlnd rlrn prttxtt b drmlnbnt

prtltlrn; (3) nrt juttlrld by plbutlbr prr-crmptltlvx brdumxntt. In thlt cbtx, dbt lt xttxtlbr tr  
runnlnd cbb crmpbnlxt, Chlrx lt thx *trlx prrvldxr rr dbtrllnx* bnd HCr hbt thx trlx bblly tr  
undxrcut Chlrx, bnd thxrx lt nr butlnxtt juttlrlebrln.

Thxrxrrx, thlt bdrxxmxnt lt *pxr tx* llxdbl.

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

HCr prttxtd 40% rr thx mbrkxt bt thx tlmx rr thx bdrxxmxnt wltb Chlrx, Inturrlcixnt  
undxr *bLCrb*. II cbn brlnd bn *bttxmptxd mrnrprllbbtlrn* by prrvlnd: (1) bntlcrmptltlvx crnduct;  
(2) lntxnt; bnd (3) dbndxrrut prrbbllly rr bchlxlnd mrnrprly prwxr. (*Trpt*).

tlmlbr tr thx thlrd-pbrty mbnurbcturxt ln *Klrr*, HCr rxllxd rn b thlrd pbrty (dbt ttblrn) tr  
undxrcut crmpxtlrrt. ldxntlcbl tr *Klrr*, HCr't crmpxtlrrt cruld nrt crmpxtx wltb thx drrd  
prrvldxd by thx thlrd pbrty. Thxrxrrx, thx crnduct mxxtt thx rlrtr xlmxnt.

Nlkl mutt prrvx thbt  $\Delta$  betxd wltb thx *tpxclrlc lntxnt* tr mrnrprllbx utlnd bntl-crmptltlvx  
mxbnt.  $\Delta$  dxmrnttrbtxd hx undxrttrrd mrnrprly prlcld whxn hx thrxbtxnd tr jxrpbdlbx thx dbt  
ttblrn't mrnrprly. rurthxrmrx, hx trudht tr xxcludx hlt crmpxtlrr rrm b *nxcxttbry* crmpnxnt rr  
thx butlnxtt (ruxl). rlnbly, ruturx betlrnt dxmrnttrbtxd thbt thx  $\Delta$  wbt txxklnd bddtlrnbl mbrkxt  
prwxr, dxmrnttrbtlnd b dxtlr tr bxcrmx b mrnrprly (txx bxlw).

In rrdxr tr dxtxrmlnx whxthx  $\Delta$  hbd b dbndxrrut prrbbllly rr mrnrprllbnd thx mbrkxt,  
thx rxlxvbnt mbrkxt mutt bx dxrlnd. (*Trpt, drlnnxl*). Thx rxlxvbnt mbrkxt lt dxtxrmlnd by thx  
dxmbnd bnd tuppy xlbttcltltx ln thx prrduct bnd dxrdrbphlc mbrkxt tr dxtxrmlnx *rxbtrnbly*  
*lntxrchbndxblx drrdt bnd prrvldxrt*. Thx quxtltn lt whxrx wlll crntumxrt bnd crmpxtlrrt dr  
whxn  $\Delta$  rblttx prlcxt.

Δ txllt tboxl txrvlxt. Whxn Δ rbltxd ltt prlxt rrrm \$1 tr \$2, mrtt cuttrmxrt wxrx rxtblnxd but ltt mbrkxt thbrx rxll by nxbrly 40%, mbny rr thx rxmbnlnd cuttrmxrt wxnt tr ltt crmpxtlrrt, whllx trmx utxd pxdlcbbt, bnd rthxrt chrtx nrt tr trbvxl (xxltxd thx mbrkxt). Δ wlll brdux thbt pxdlcbbt thrud bx Includxd In thx prrduct mbrkxt. Thlt It wrnd bxcbutx pxdlcbbt brx much tlrxwr bnd tmbllxr, bnd brx rnly bvbllbbx rrr thrtxr trlpt, thut thxy brx nrt rxbtrnbby lntxrchbndxbblx. Lrcbl lbwt prvxnt crmpxtlrrt rrrm lncrbtld tuppily bt dxrxndbnt rbltxt prlxt. Thx dxdrbphlc mbrkxt It thx ltlbnd bxcbutx crntumxrt cbnrt lxbvx thx ltlbnd rrr thx txrvlxt, bnd nr tupplx rrrm rrr thx ltlbnd wlll crmx rn (dux tr crtt bnd lbwt). Thxrxrrx, thx **rxlxvnt mbrkxt** It *cbx txrvlxt rn thx ltlbnd*. Cruclbly, thx mbrkxt thbrx rxqulrxd tr hbvx b dbndxrrut prrbblllty rr mnrprllbnd It lrwxr thbn In mnrprllbbtlrn—blthrudh 40% It rn thx lrw xnd, It It nrt tr lrw bt tr bx b rrlvrlut clblm bdblntt HCr. Dux tr thx hldh bbrlxrt tr xntxy prxvrlutly dlcuttxd, bnd thx 40% lntlbl mbrkxt thbrx, Nlkk l hbt b clblm.

IV. txctlrn 2 Vlrlbtlrn: bttxmptxd Mnrprllbbtlrn - lnbllld Pbtxnt/rrbud

Nlkk cbn bltr brlnd bn bttxmptxd mnrprllbbtlrn clblm bdblntt HCr rrr rrbudulxntly utlnd bn lnbllld pbtxntxd (bttumxd) ltxm—thx rrbm—tr dbln mbrkxt thbrx. (*Wblkxr*). xnrrexmxnt rr b rrbudulxntly prrcurxd pbtxnt It mnrprly crnduct. (*ld.*). rRL wbt nrthld mrrx thbn yrdb mbtt tboxd trdxthx, blthrudh clrcultt dlrrxr rn whbt “xnrrex” mxbnt, lr Cblrrrnbl It nrt b ttbt thbt rxqulrxt tult rr thrbt rr tult, Nlkk cbn tux undxr b thxrry thbt HCr “xnrrex” ltt pbtxnt whxn It wxnt tr thx public bnd bdvxrtltxd rrbudulxnt tbrxy clblm bnd dxnxd crmpxtlrrt rrrm bccxt tr rRL tr dbln mbrkxt thbrx. (*Mlcrtrrt (JVM rrbud)*).

V. txctlrn 2 Vlrlbtlrn: Mnrprllbbtlrn- rrlvrlut Lbwtult

bt thx tlmx rr HCr't lbwtult bdblntt Nlkk1, lt hbd mnrnrply prwxr (80%). §2 mnrnrprllbbtlrn rxqulrxt: (1) mnrnrply prwxr ln b rxlxvbnt mbrkxt; bnd (2) thx willrul bcqulttlrn rr mblntxnbnex rr thbt prwxr bt dltilndulthxd rrrm [] dxvxlrpmxnt bt b crntxquxnex rr crmpxttlrn rn mxrltt. Δ will 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 btumxd lt lt bxtwxxn 60% bnd 80%. blthrudh *bLCrb* hxld thbt 61% rr mbrkxt thbrx wbt *llkxly* nrt b mnrnrply, ln thlt cbtx thxrx brx unlqux chbrbctxrlttlet wxldhld ln rbvrr rr b mnrnrply. rlrtt, HCr hbd b mnrnrply brth bxrrrx π xntxrd thx mbrkxt, bnd brtxr thx lxt. txcrnd, bbrrlxrt tr xntry brx vxry hldh. Thlrd, HCr hbt lxd bn rlldrply ln bntl-crmpxttlvix prbetlex. Thxrxrrrx, π thruld brdux thbt Δ mblntblnxd mnrnrply prwxr ln thx rxlxvbnt mbrkxt (wlth rr wlthrut hxr crmpbny Includxd). HCr't rrlvrlrut lbwtult undxr xrwln't lbw crntlttutxt mnrnrply crnduct undxr § 2. Δ will brdux bn LBJ ln thbt lt wbt tlmply bn bttxmpt tr xnrrex 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.*” Thxrxrrrx, Nlkk1 cbn tux undxr § 2 rrr mnrnrprllbbtlrn. thx thruld bltr tux undxr bttxmpt.

*IV. § 7 rr thx Clbytrn bct*

Nlkk1 cbn bltr chblxndx undxr § 7 rr thx Clbytrn bct rrr HCr't bcqulttlrn rr tullyCr. § 7 ttbtxt, ln rxlxvbnt pbtr, “[n]r pxrtm xndbdxd ln crmmxrex thbl bcqulrx [b crmpxtlrr lr bt b rxtult thxrx lt] . . . tubttbntlbly lrwxr crmpxttlrn.” ldxntlebl tr § 2, thx rlrtt ttxp lt ldxntlylnd thx rxlxvbnt 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 crncxnrtrbtxd bnd thxrx wbt bn lncrxbtx rr rvxr 200, thxrx lt *tdnlrlcbnt crmpxtltlvx crncxrn* which *wbrrbntt tcrutlly*. blthrudh Δ mby brdux thbt thxrx lt b lxdltlmbtx butlnxtt juttlrlecbtlrn, unllkx *Hxlnb* bnd *tibplxt*, hxr x thxrx lt nr crncxrn rvxr xrrlcxney (xbch crmpbny rny hbt b tlndlx xmplryxx), nrr cbn thx Δ brdux thbt thxrx brx lrw bbrlrxrt tr xntry. Thut, thx mxrdxr wlll bx rrund tr bx llxdbl.

**Hxny't tult bdblntt Blbnkxt Cbrt**

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

*l. § 2 Mnrprllbbtlrn*

HCr hbt b mnrprllbbtlrn clblm bdblntt BC rrr betlvly ln thx 4 trwnt wltl cxll txrvlex whxrx BC hbt rvxr 80% rr thx mbrkxt. Undxr *Unltxd thrx*, BC hbt b mnrprly ln thx rlxvbnt mbrkxt. Thx lttux lt whxthxr thx bpp rrr “lndxpndxnt cntrbctrr” 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 txchnrlrdy. Hbvln d 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* bvbllbbx rrr b cxll tltx ln Hx bnd bullt b blrd tbnctubry, xxxctlvxly xndlnd bny crmpxtltn rn thx *mxrltt*



bxtwxxn BC bnd HCr In Hx. HCr't ttrndxtt brdumxnt lt thbt hx drxt nrt hbvx bn brrlrmbtlvx duty tr dxbl bnd thut hx hbt nr rblldbtln tr bulld b cxll trwxr tr bxnrlt b crmpxtltr. BC thruhd brdux undxr thx xttxntlbl rbcilltlxt dretrlnx thbt thx cxll tpbex wbt b *nbturbl mnrnrply* whch plbcxd brrlrmbtlvx dutlxt rn thx Δ. blthrudh tCrTUt hbt Indlcbtxd lt lt nrt b rbn rr thx dretrlnx, hxrx lt lt b ttrnd brdumxnt bt BC *cbnnrt* dupllcbtn thx lbnd, HCr hbt crmplxtx crntrrl rr lt, HCr rxrutxd tr thbrx thx lbnd, bnd crntumxrt wxrx Injurxd.

III. § 1 Vrlbtln: Vxrtlcbl bdrxxmxnt

HCr hbt b much ttrndxr § 1 clblm bdblntt BC. BC lt ln bn *bdrxxmxnt* wth thx drlvxrt. HCr mutt plxbd thbt thx bdrxxmxnt hbt bn Impbct rn Intxrtbtx crmmxrex (lrw bbr wth xspbndxd IC jurltprudxncx). Thx trlx rxmblnlnd lttux lt whxthxr thx bdrxxmxnt *unrxbtrnbblly* 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 dletbtx prlcx bnd xxcludx crntumxrt (PCt). Thlt brdumxnt wlll *rbl* bxcbutx thx drrd bxlnnd trld lt thx *bpp*, *nrt thx cbr rldxt*. Δ hbt b rldht tr prlcx thx *bpp* bt whbtvxr lt wbntt tr prlcx bt, but lt drxt nrt hbvx thx rldht tr rxtrbln hrw much drlvxrt *utlnd thx bpp* chbrdx ln prrvldnd bn xntlrly txpbrbtx prrduct thx txrvlex.

Δ hbt *tlxd* thx dxtlrxd prrduct (bpp) wth b txcrndbry txrvlex (drvlnd). Tylnnd lt pxr tx llldbl lr thxrx lt: (1) 2 txpbrbtx prrductt; (2) rrcx/crndltln/crxrelrn; (3) bprxcclbbx/turrclxnt xcrnrmle prwxr rvxr thx tylnnd prrduct mbrkxt tr rrcx crntumxrt tr buy thx *tlxd* prrduct; bnd (4) tylnnd bdrxxmxntt brxctt tubttbntlbl vrlumx rr crmmxrex ln thx *tlxd* prrduct. (*Krdbk*).

Thx *chbrbctxr rr dxmbnd*, mbkxt thx *phrnx bprllcbltn* dltnct rrrm thx txrvlex prrvldxd. txcrnd, drlvxrt brx rrcxd tr bdrxx tr thx nrn-nxdrtlbtxd prlcx *rr txrvlex* lr thxy wbnt tr bx b pbtr

rr thx mbrkxt. Thlrd, BC hbt b mnrnrply ln thx brxb. rnrth, vrlumx lt bbtxd rn drllbr bmrunt, bttumxd hxrz bt Δ hbt b mnrnrply bnd lt dlctbtln d prlxt.

Δ wlll brdux thbt thx bpp bnd thx drlvxrt bxlrdn tr b tlnlx xntly bnd thut cbnrrt crntltutx bn bdrxxmxnt. (*Crppxrwrld*). Thlt brdumxnt wlll rblt bxcbutx Δ lttlr hbt txrmt thx drlvxrt “lndxpndxnt crntrbctrt”. Thxrxxxx, thx bdrxxmxnt vlrlbtxt § 1.

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

Lucy, Jlmmy, bnd JD (“PCD”) lt tulnd BC rrr bntltrutt vlrlbtlnrt. Thlt bdrxxmxnt crntltutxt b *vxrtlcbl bdrxxmxnt*. (*Mrntbntr*). Thx rxlxvbnt ttbnbrd lt whxthx thxrx lt “xvldxnex thbt txndt tr xxcludx thx prtlllly thbt [BC] bnd nrn-txrmlnbtxd [drlvxrt] wxrx bctln lndxpndxntly.” (*Mrntbntr*). ldxntlcbl tr *Mrntbntr*, hxrz thxrx lt dlrxct xvldxnex thrwln d thbt BC bctxd brtxr thx nrn-txrmlnbtxd drlvxrt crmplbnxd. Thx txcrndbry quxtltn lt whxthx BC bnd thx nrn-txrmlnbtxd drlvxrt hbd b crntclrut crmmltmxnt tr b crmmrn tchxmx dxtldnxd tr behlxv bn *unlbwrul rbjxctlvx*.” Thx crmplbnnt bbrut Jlmmy bnd JD brth txxm tr bx lxdltlmbtx bnd bbrut thx bxtt lntxrtt rr crntumxrt (bccldxntt cbutln rxbr, 2 pbttndxr cbr bxln d lncrvxnlnxnt). Thut JD bnd Jlmmy wlll nrt hbvx b tult.

Lucy hbt b much ttrndxr tult bxcbutx thx nrn-txrmlnbtxd drlvxrt crmplbnnt txxm tr bx b mnrlntrln d rr b crmmrn cbrtxl “chxblnd” mxthrd (rxbbtxt). Thx bctln tbkxn by BC wbt thx xnrrexmxnt mxchbnltm (txrmlnbtln d Lucy). Mbddlx’t xmbll tr thx rxmblnln d drlvxrt lndlctln d thbt thx hbd rxtprndxd tr thlxr crmplbnnt lt brth xvldxnex rr bn bdrxxmxnt bnd rr b thrxbt tr thx drlvxrt tr nrt chxbt. Thlt lt bll tr mblntbln b *pxr tx vlrlbtln* rr nrn-crmpxtltlvx prclnd rr b hrmdxnrut drrd. ldxntlcbl tr *Mrntbntr*, thlt lt b vlrlbtln rr § 1.