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## The Two Problems

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# Symposium

## Multimember Legislative Bodies and Intended Meaning

*THE FOLLOWING SYMPOSIUM ESSAYS ADDRESS THESE TWO PROBLEMS:*

1. Smith and Jones is an exporting firm and a partnership. Mary is their employee. Mary has a memorandum signed by Smith and Jones directing her to take a shipment of textiles to the ship Peerless, which is bound for Athens and a buyer there. Unbeknownst to Smith and Jones, there are two ships Peerless, both of which are bound for Athens, one leaving from Plymouth and the other from Southampton. Smith wants the shipment to go to the only Peerless he is aware of, the one in Plymouth, which not coincidentally is owned by his brother. Jones, on the other hand, wants the shipment to go to the only Peerless *he* is aware of, the one in Southampton, which not coincidentally is owned by his sister.

Mary's instructions are only operative if they are agreed to and signed by both Smith and Jones. Unfortunately, after signing this instruction, Smith and Jones left their headquarters for a trip to the wilderness of Siberia and cannot be contacted. What has Mary been *instructed* to do (not what should she do)?

2. The legislature of Lex has passed a new tax that applies to imported fruit but not imported vegetables. One third of the legislators, the "tomato lovers," assumed that "fruit" carried its culinary meaning

and that tomatoes were not “fruit” under the statute.<sup>1</sup> Another one-third of the legislators, the “tomato haters,” assumed “fruit” carried its botanical meaning and that tomatoes were “fruit.”<sup>2</sup> Both groups of legislators voted for the law, but neither group would have voted for it had “fruit” had a meaning other than the meaning they believed it had. The remaining one-third of the legislators were opposed to the new tax in its entirety and voted against it. All legislators voting for the law endorsed a provision of the law that reads, “There shall be no discrimination among types of fruit in the levying of this tax” (a provision they added after seeing the draft by the legislative aide).

A case comes before you, a judge, the issue in which is whether the tax applies to a shipment of tomatoes and kiwis.

You have learned all the facts related above. What do you decide?

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1. *Cf. Nix v. Hedden*, 149 U.S. 304 (1893).

2. Assume that the legislative aide who drafted the law went to the tomato lovers and assured them that tomatoes were not “fruit” (the culinary meaning) and then went to the tomato haters and assured them of the opposite (the aide’s brother had a business that would be benefitted by a tax on imported tangelos).