A woman borrowed $800,000 from a bank and gave the bank a note for that amount secured by a mortgage on her farm. Several years later, at a time when the woman still owed the bank $750,000 on the mortgage loan, she sold the farm to a man for $900,000. The man paid the woman $150,000 in cash and specifically assumed the mortgage note. The bank received notice of this transaction and elected not to exercise the optional due-on-sale clause in the mortgage.

Without informing the man, the bank later released the woman from any further personal liability on the note.

After he had owned the farm for a number of years, the man defaulted on the loan. The bank properly accelerated the loan, and the farm was eventually sold at a foreclosure sale for $500,000. Because there was still $600,000 owing on the note, the bank sued the man for the $100,000 deficiency. Is the man liable to the bank for the deficiency?

(A) No, because the woman would have still been primarily liable for payment, but the bank had released her from personal liability.

(B) No, because the bank's release of the woman from personal liability also released the man.

(C) Yes, because the bank's release of the woman constituted a clogging of the equity of redemption.

(D) Yes, because the man's personal liability on the note was not affected by the bank's release of the woman.

ANSWER: D

A man borrowed money from a bank and executed a promissory note for the amount secured by a mortgage on an office building that he owned. Several years later, the man sold the building. As specified in the contract of sale, the deed to the buyer provided that the buyer agreed “to assume the existing mortgage debt” on the building.

Subsequently, the buyer defaulted on the mortgage loan to the bank, and appropriate foreclosure proceedings were initiated. The foreclosure sale resulted in a deficiency.

There is no applicable statute.

Is the buyer liable for the deficiency?

(A) No, because even if the buyer assumed the mortgage, the man is solely responsible for any deficiency.

(B) No, because the buyer did not sign a promissory note to the bank and therefore has no personal liability.

(C) Yes, because the buyer assumed the mortgage and therefore became personally liable for the mortgage loan and any deficiency.

(D) Yes, because the transfer of the mortgage debt to the buyer resulted in a novation of the original mortgage and loan and rendered the buyer solely responsible for any deficiency.

ANSWER: C