Maryland State Board of Law Examiners

FEBRUARY 2024 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND – REPRESENTATIVE GOOD ANSWERS

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MPT 1

Representative Good Answer No. 1

MEMORANDUM

Statement of Facts

[omitted]

Argument

I. Ms. Logan committed robbery when she took the victim's purse by force.

Under Franklin Criminal Code §901, robbery is a felony and is defined as the "intentional or knowing theft of property from the person of another by violence or putting the person in fear." The Franklin Court of Appeal details the four elements required to prove robbery: "(1) intentional or knowing nonconsensual taking of (2)

money or other personal property (3) from the person or presence of another (4) by means of force, whether actual or constructive." (State v. Driscoll, 2019). To prove that the defendant used force, there must be a showing that the force "constitute[d]...the posing of an immediate danger to the owner of the property." Id., citing State v. Schmidt (Fr. Ct. App. 2009). In Driscoll, the Court affirmed the defendant's guilt because the defendant grabbed the victim's arm and pushed the victim away. Id. While the victim was not injured in Driscoll, the Court held that the defendant's struggle with the victim gave rise to a "sufficient use of force to constitute robbery." Id. The distinction between theft and robbery is that robbery requires the "use of force or threat of physical harm." Id. Theft requires the "taking of something stealthily without the owner's knowledge," in contrast to robbery, which includes "shaking the owner or struggling with the owner while trying to take the item." Id.

Here, Ms. Logan approached the victim, Ms. Owens, from behind and demanded Ms. Owens's purse. Ms. Logan then pulled the purse off of Ms. Owens's arm. The first, second, and third elements of robbery, as detailed above, are satisfied because Ms. Logan intentionally took Ms. Owens's personal property, Ms. Owens's purse, from her person. The fourth element requires that Ms. Logan take the purse by means of force. While Ms. Owens was walking down the street, she felt Ms. Logan grab her purse. Ms. Owens said she heard Ms. Logan demand the purse saying, "Let me have that purse." Ms. Owens testified that she did not try to stop Ms. Logan because "money is hardly worth getting hurt over," and she allowed Ms. Logan to take the purse. When Ms. Logan took the purse off of Ms. Owens's person, Ms. Logan took the purse with enough force that the purse got twisted and hurt Ms. Owens's arm badly. While Ms. Owens did not struggle with Ms. Logan as the defendant and victim struggled in Driscoll, Ms. Owens clearly understood the danger in engaging in such a struggle when she testified that "money is hardly worth getting hurt over." Ms. Owens's testimony at the preliminary hearing shows that Ms. Owens understood that if she did not comply with Ms. Logan's demand for the purse, Ms. Owens would be placed in peril of physical harm. Ms. Logan constructively used force to take Ms. Owens's purse from her person.

Ms. Logan may argue that the victim, Ms. Owens, was not in fear when Ms. Logan took Ms. Owens's purse. Ms. Logan did not put Ms. Owens in immediate danger. Ms. Logan did not struggle with Ms. Owens when taking her purse. These arguments would allow Ms. Logan to argue that she is not guilty of robbery and Ms. Logan may try to argue that she should not be guilty of more than theft. However, this argument is likely a weak argument because Ms. Logan did not take the purse stealthily or without Ms. Owens's knowledge. There was a threat of force from Ms. Logan if Ms. Owens did not comply with Ms. Logan's demand.

Ms. Logan's actions satisfy all four elements of robbery; therefore, the District Attorney should seek an indictment for robbery.

II. Ms. Logan is not responsible for her accomplice's death under the felony murder rule

First-degree felony murder is defined as "a killing of another committed during the perpetration of, attempt to perpetrate, or immediate flight from the perpetration of or attempt to perpetrate...robbery." FR. CRIM. CODE §970. The Franklin Court of Appeal expounds on the timeline in the foregoing statute in holding that the "felony-murder rule still applies if the killing occurs during the defendant's flight." State v. Clark, 2007. A defendant is fleeing from a felony until the defendant has reached "a place of temporary safety." In Clark, the defendant argued that the defendant had completed the burglary and "was on her way to a place of temporary safety." Id. The Court held that there was "no break in the chain of events" as the defendant was yet fleeing from the crime. Id. The court distinguishes this case from State v. Lowery, where the defendant had arrived home after the completion of a robbery and an officer's gun went off and killed the defendant's wife. Id. The defendant was not criminally responsible for the death as the felony had been completed. Id.

Franklin law considers both cause in fact and proximate cause in determining whether the death was caused by the commission of a felony. State v. Finch, Fr. Sup. Ct. (2008). Cause in fact is the "but-for causation," where "but for the actions of the defendant, the death would not have occurred." Id. Proximate cause is the legal cause where a "reasonable person would see as a likely result of that person's felonious conduct." Id. A superseding cause can break the chain of causation as an intervening independent cause. Id. If the superseding cause "supplants" a defendant's actions as the cause of death, the "defendant is not legally responsible for the cause of death." Id., citing Craig v. Bottoms. Gross negligence may be a superseding cause, but ordinary negligence will not. Id. Gross negligence is the "wantonness and disregard of the consequences to others that may ensue." Id.

The District Attorney must show that the death occurred during the commission of a felony and that the defendant's actions were the cause of the death.

(a). Ms. Logan was still fleeing from the robbery when the accident occurred, so the accident occurred during the commission of a felony and can be considered felony murder.

Ms. Logan's accomplice, Mr. Stewart, died in a car accident while fleeing from the robbery that is detailed above. Mr. Stewart was present during the robbery, standing about ten feet away from Ms. Logan. An officer received a "be on the lookout"("BOLO") notification matching Ms. Logan's description getting into a green sedan. The officer followed the sedan. When the sedan threw an object on the shoulder of the road, which was later discovered to be Ms. Owens's purse, the officer activated on her sirens and blue lights.

Here, it is clear that Ms. Logan was fleeing from the crime. Ms. Logan's accomplice, Mr. Stewart, waited for her as she robbed Ms. Owens. Mr. Stewart and Ms. Logan then entered the green sedan together. As in Clark, there was no break in the chain of events as Ms. Logan and Mr. Stewart were fleeing from the scene of the robbery.

Ms. Logan may argue that the robbery was complete at the time of the accident and, therefore, Ms. Logan was no longer fleeing. However, the Court in Clark is clear that a felon must reach a place of temporary safety and not be in the act of fleeing. There must be no break in the chain of events as seen here. There was no break in between the robbery and fleeing in the green sedan.

The accident occurred during the commission of a felony and Ms. Logan can be considered liable for Mr. Stewart's death under the felony-murder rule.

(b). The malfunctioning traffic lights are not a superseding cause and cut off Ms. Logan's liability.

The officer following the sedan observed the sedan continue through and intersection and collide with an SUV. The sedan was traveling within the speed limit when it went through the intersection. Mr. Stewart had been driving and was not wearing his seatbelt. Mr. Stewart died from his injuries. Ms. Logan had been wearing her seatbelt and was minimally injured. The traffic lights at the intersection were malfunctioning at the time of the car accident and were green in all directions. The lights had last been inspected on December 1st, 2023, which was about six weeks before the accident on January 17, 2024.

Here, Ms. Logan may argue that the malfunctioning traffic lights broke the chain of causation. However, the superseding cause does not supplant the defendant's conduct as the legal cause of death here. There was only ordinary negligence on the inspection of the traffic lights as they seem to be inspected with some regularity. They were only inspected six weeks ago and there had been no incidents since then. Because the accident was caused by Ms. Logan and Mr. Stewart fleeing from the officer instead of stopping, the malfunctioning lights do not break the chain of causation, and the accident is caused by fleeing from the felony.

The malfunctioning traffic lights did not cause Mr. Stewart's death, but fleeing from the robbery caused his death; therefore, Ms. Logan is liable.

Conclusion

In conclusion, the supporting case law and statutes show that there is strong evidence supporting a charge of robbery and a charge of felony murder. The District Attorney should seek indictments for both robbery and felony murder.

Representative Good Answer No. 2

OFFICE OF THE DISTRICT ATTORNEY COUNTY OF HAMILTON
805 Second Avenue
Centralia, Franklin 33705

TO: Deanna Gray, District Attorney

FROM: Examinee

DATE: February 27, 2024

Maryland State Board of Law Examiners

FEBRUARY 2024 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND – REPRESENTATIVE GOOD ANSWERS

RE: State v. Iris Logan

Introduction:

I have been asked to evaluate whether you, the District Attorney of Hamilton County, should proceed with charges of robbery and felony murder against defendant Iris Logan. As a matter of charging policy, our office does not over-charge in cases where evidence is weak. The following is my recommendation and analysis of the strengths of each charge and any possible arguments that Ms. Logan may raise in response.

Analysis:

I. Robbery.

Under Franklin law, robbery is defined as the "intentional or knowing theft of property from the person of another by violence or putting the person in fear." Fr. Crim. Code §

901. Robbery requires proof of four elements: (1) intentional or knowing nonconsensual taking of (2) money or other personal property (3) from the person or presence of another (4) by means of force, whether actual or constructive. Driscoll. While Franklin Criminal code § 901 requires "violence," Franklin case law has clarified that, as it pertains to

robbery, "violence" is coextensive with "force." Driscoll. The force necessary to constitute robbery is the posing of an immediate danger to the owner of the property. Driscoll citing Schmidt. Immediacy of danger can be demonstrated by either putting the victim in fear or by bodily injury to the victim. Driscoll. The critical difference in distinguishing theft from robbery is the use of force or threat of physical harm. Driscoll. Taking something without the owner's knowledge is theft, whereas the use of any amount of force to take the item from the owner is robbery. Driscoll.

In Driscoll the Franklin Court of Appeal affirmed the defendant's conviction for robbery because the defendant pushed the owner of a laptop when the owner tried to grab the defendant's arm to prevent him from stealing her item. Driscoll. The court found that the struggle was sufficient use of force to constitute robbery under Franklin law. Driscoll.

In the case at hand Iris Logan (Logan) did not use a threat of force or put the victim, Tara Owens (Owens), in fear of injury. Instead Logan approached Owens from behind and said "Let me have that purse" and snatched it from Owens' arm. As a threshold matter, Logan approaching Owens' from behind and telling her to give her the purse demonstrates that she knowingly, and intentionally took the purse (property) from Owens. Owens let Logan have the purse with no struggle. Any charge of Robbery would thus focus on the physical harm caused to Owens and the use of force to take the item from Owens. Owens has testified during the preliminary hearing that she did not put up any fight and let Logan have the purse. However, Logans snatched the purse from Owens shoulder and in the process Owens arm got twisted up in getting the bag off and resulted in a sprained wrist.

Based on Franklin jurisprudence, that violence is coextensive with force, and § 901 of the Franklin Criminal code requiring violence, and the fact that Logan knowingly and intentionally taken the property (purse) from Owens, it appears as though the elements of Robbery are present and thus Logan can be properly charged with the crime of Robbery.

IIa. Felony Murder.

Under Franklin law felony murder is a killing of another committed during the perpetration of, attempt to perpetrate, or immediate flight from the perpetration of or attempt to perpetrate any first-degree murder, act of terrorism, arson, rape, robbery, burglary, kidnapping, aggravated child abuse, aggravated child neglect, or aircraft piracy. Fr. Crim. Code. § 970. Franklin's definition of felony murder includes death occurring while the

felon is fleeing from commission of the felony. Clark. Even if it was clear beyond question that the crime was completed before the killing, the felony-murder rule still applies if the killing occurs during the defendant's flight. Clark. Franklin's statutory language extending liability for felony murder to deaths occurring "in immediate flight from" the felony is consistent with the statutory scheme of many other states. Clark. In assessing whether a defendant is still engaged in fleeing from the felony, it is critical to determine whether the fleeing felon has reached "a place of temporary safety." Clark.

In Clark the Franklin Court of Appeal affirmed a felony murder conviction holding that the defendant was in the process of fleeing to a place of safety but had not yet arrived and thus there was no "break in the chain of events." Clark.

The Clark case was distinguished from Lowery where the court found a break in the chain of events and reversed a felony murder conviction, finding that the defendant was not criminally responsible for the death of his wife, because the defendant had left the scene of the crime and arrived home when the police officers arrived and the wife was accidentally shot. Lowery.

According to witness Jed Rogers (Rogers) he observed Logan take the purse from Owens and immediately thereafter give the purse to a man nearby. Rogers was unable to get a good description of the man who received the purse but was able to provide a very detailed description of Logan and promptly reported what he saw to 911, and dispatchers shortly after issued a be on the lookout (BOLO).

Immediately after the BOLO was issued, indicating a purse snatching with injury, which responding Officer Torres (Torres) recognized as qualifying for robbery, Torres observed a woman matching the description of Logan get into a vehicle with a man. Torres than began to follow the vehicle. A few miles and about ten minutes later Torres observed the drive throw an object out of the car so she activated her lights. Immediately after Torres activated her lights the car crash occurred which resulted in the death of Jeremy Stewart (Stewart), the driver of the vehicle in which Logan was riding.

The car crash occurred just slightly more than ten minutes after the robbery of Owens. Stewart and Logan had not yet arrived anywhere and were still in their vehicle. As such, there are no facts to suggest that Logan had gotten to a place of safety to sufficiently "break the chain" from the robbery and the death of Stewart. This case is much more analogous to Clark than to Lowery. Logan had not yet arrived to a place of safety and thus not broken the chain from the criminal act of felony robbery to the death of Stewart and she can thus be properly charged with felony murder, if the causation elements are satisfied.

IIb. Causation.

Franklin law provides that a defendant may be charged with felony murder when the defendant's actions in the course of committing, attempting to commit, or fleeing from certain felonies were the cause of the death. Finch. The causation required by the felony- murder statute encompasses two distinct requirements: "cause in fact" and "legal cause" (often referred to as "proximate cause"). Finch.

Cause in Fact:

"Cause in fact" is commonly referred to as "but-for causation," and is found when "but- for" the acts of the defendant, the death would not have resulted. Finch. Cause in fact is an essential element, but not itself sufficient to establish guilt for felony murder because this type of analysis would itself cast too large a net, and it is therefore limited by the proximate, or "legal cause" which adds the requirement of foreseeability. Finch.

As the Franklin Courts have indicated, cause in fact is a broad analysis. Applied here, but- for Logan's action of committing robbery, stealing a purse from Owen by the use of force causing bodily injury, Stewart would not have been in his vehicle with her at the time, thrown out the purse, and driven through the intersection.

But-for causation is established in this case.

Legal Cause:

The relevant inquiry under "legal cause" is whether the death is of the type that a reasonable person would see as a likely result of the defendant's felonious conduct. Finch. The foreseeability aspect of causation reduces the unfair application of guilt on a defendant when the outcome(s) are totally outside of their contemplation when committing the offense in question. Finch. The Franklin Supreme Court has held that it is within sound public policy to hold that when a felon's attempt to commit a forcible

felony sets in motion a chain of events that were or should have been within his contemplation when he motion was initiated, he should be held responsible for any death that by direct and almost inevitable sequence results from the initial criminal act. Finch. Failing to apply a guilt when the death was a result of foreseeable action would "thwart" the intent behind the felony-murder doctrine. Finch citing Lamb.

Logan robbed Owens just before 5:30 pm on January 17, 2024. During this time of year it may have been starting to get dark outside, but the robbery occurred in the middle of the intersection of Broadway and 8th Avenue, in plain enough fashion for their to be at least one witness. In committing a robbery in as open a public forum as seen here it is reasonably foreseeable that within a relatively short period of time the police would be called and they would be looking for the suspect(s). It is further foreseeable that an

officer could have heard the description of Logan and be following the vehicle which she was seen entering. When police pursue suspects the intention is to stop them for questioning of the suspected crime. Unfortunately there are situations in which suspects do not stop and violence, and or death, have resulted. If pursuit by the police is in the form of a vehicle "chase" it is reasonably foreseeable that the resulting chase could end in a vehicle accident, which poses the risk of injury and/or death.

The resulting car crash, after Torres activated her lights, within ten minutes of the crime, is a reasonably foreseeable result of committing the crime, and thus Logan's commission of robbery is the proximate cause of Stewarts' death.

Superseding Cause:

A subsequent intervening independent cause that breaks the chain between a defendant's actions and the death is known as a "superseding cause." Finch. The factors necessary to demonstrate a superseding cause are (1) the harmful events of the superseding cause occur after the original criminal act, (2) the superseding cause must not have been brought about by the original criminal acts, (3) the superseding cause must have actively worked to bring about a result that would not have followed from the original acts, and (4) the superseding cause must not have been reasonably foreseen by the defendant. Finch. If all four elements are met in a case the superseding cause "breaks the chain of proximate causation and "supplants" the defendant's conduct as the legal cause of death and removes criminal liability from the defendant for the death. Finch citing Craig. Under Franklin jurisprudence "ordinary negligence" is insufficient to serve as a superseding cause. Finch. However, "gross negligence" (wantonness and disregard of the consequences to others) will generally be considered a superseding cause that breaks the chain.

In Finch the Franklin Supreme Court affirmed a conviction for felony murder against Finch, one of two individuals committing armed robbery, because they found that the security guards response and subsequent wrestling with the deceased co-robber was a foreseeable occurrence from the conduct of committing armed robbery.

The Finch Court distinguished that case with Knowles but analogized to Johnson which were both heard in neighboring Olympia. In Knowles the Olympia Supreme Court reversed a conviction for armed robbery because they found a superseding cause when the robbery victim, who had been stabbed twice, later died of an infection

which was the result of an operation conducted by an intoxicated physician. Knowles. The Court held that while medical treatment was foreseeable that the physician's intoxicated state was gross negligence, not foreseeable, and broke the criminal liability of Knowles. Knowles. In Johnson the court affirmed a felony murder conviction holding that the physician's simple negligence in missing bullet fragments was an insufficient intervening act to break the chain of causation. Johnson.

The potential superseding event in this case is the malfunctioning traffic lights which led to the collision at the intersection and Stewart's death. The first element for a superseding event is present, the accident occurred after the robbery. Element number two that the superseding even not be caused by the commission of the crime, is also present. Logan's robbery in no way influenced the malfunctioning traffic lights. The fourth element related to the traffic light not being reasonably foreseeable is also present, the light had been inspected less than two months previously and was working fine, with no complaints in the interim.

The third element for a superseding cause requires that the result, Stewart's death in a car crash, must be a result that would not have followed directly from the original acts. This is the element where the court would likely find that the lights did not act as a sufficient superseding cause. As noted above the result of a police chase in a vehicle is that an auto accident could have occurred resulting in injury or death. That is exactly what happened here.

As such the lights are unlikely to be determined by a court to be a sufficient superseding cause as all elements required are not present.

III. Conclusion.

For the foregoing reasons, based on Franklin Jurisprudence and the Franklin Criminal Code, it appears as though logan could and should be charged with both robbery and felony murder for the death of Stewart. Charging both crimes is consistent with our offices approach to not over-charge based on weak facts, since the facts here support both charges.

Thank you for the opportunity to have conducted this research and analysis. If additional information is required I am happy to supplement this memorandum.

Examinee

MPT 2

Representative Good Answer No. 1

To: Michael Carter

From: Examinee

Date: February 27, 2024

Re: Randall v. Bristol County

The memorandum below sets forth the "Legal Argument" section of a brief in favor of a motion for summary judgment, which is to be filed in the U.S. District Court for the District of Franklin (the "Court") in the case of *Randall v. Bristol County*.

Legal Argument

Maryland State Board of Law Examiners

FEBRUARY 2024 UNIFORM BAR EXAMINATION (UBE) IN MARYLAND – REPRESENTATIVE GOOD ANSWERS

A public employee does not surrender all First Amendment rights merely because of employment status. *Dunn v. City of Shelton Fire Department* (citing *Garcetti v. Ceballos*). To garner First Amendment protection, a public employee must show that "(1) the employee made the speech as a private citizen, and (2) the speech addressed a matter of public concern." *Dunn*. After establishing both elements, an employee must show that her interest in expressing the speech outweighs the employer's interest in promoting effective and efficient service and that the speech was a motivating factor in the adverse employment action against her. *Dunn*.

In the current case, Olivia Randall ("Randall") spoke as a private citizen with her Facebook posts to her personal account outside of her official job duties. Moreover, the speech addressed a matter of public concern: the non-renewal of the grant needed to fund the WRP (as defined below). Randall's interest in such speech outweighed the interest of Bristol County (the "County") in promoting effective and efficient service because the County Executive did not act pursuant to such interest (rather personal motive) in taking adverse employment action against Randall. Finally, the County concedes that such speech was a motivating factor in the 2-week suspension that Randall incurred.

A. Randall Spoke as a Private Citizen Because Facebook Posts Were Not Part of Her Official Duties and Were Made to Her Personal Facebook Page

In *Dunn*, the U.S. Court of Appeals for the Fifteenth Circuit (the "Fifteenth Circuit") cited *Lane v. Franks* for the holding that speech made "pursuant to [] ordinary job duties" is not speech as a private citizen. However, just a few years earlier, in *Smith v. Milton School District*, the Fifteenth Circuit recognized that "posting on a personal social media account typically is not [speech related to ordinary job duties]." There, the Fifteenth Circuit affirmed a teacher's 42 U.S.C. § 1983 claim against his school district alleging that the school district violated his First Amendment rights when it failed to renew his teaching contract because of tweets the teacher posted on his personal Twitter account.

Here, according to the testimony of Randall in her deposition, posting to Facebook was not part of her job duties as director of Bristol County's Workforce-Readiness Program (the "WRP"). Moreover, Randall's posts were to her "personal Facebook page." Given that Randall's posts were not part of her ordinary job duties and were made to her personal social media account, such posts were Randall speaking as a private citizen for purposes of her § 1983 claim.

B. Randall's Speech Addressed a Matter of Public Concern Because the Content Was Designed to Inform the Public, the Posts Were to a Public Audience, and She Did Not Have an Improper Motive

According to the Fifteenth Circuit in *Dunn*, there are three factors that must be considered when deciding if speech is on a matter of public concern: "the speech's content (what the employee was saying); the speech's nature (how the employee spoke and to whom); and the context in which the speech occurred (the employee's motive and the situation surrounding the speech)." Each factor is addressed, in turn, below.

The content of Randall's speech primarily concerned a matter that might be of interest to the public, i.e., the renewal of a grant to fund the WRP. According to Randall's testimony, grant funds were being used by the County to help residents who did not complete their GED to take such GED tests and finish their high-school education. As a result, 40 Bristol County residents had utilized the program, many of whom were now employed. Other members of the public might be interested in knowing about the program or even signing up for the program itself. The testimony from County Executive Marie Cook ("Cook") appears to support this. Cook

indicated that, following Randall's Facebook posts, she was contacted by "[m]aybe a dozen" members of the public."

The County will likely assert that Randall's Facebook posts were personal in nature. In *Dunn*, in affirming the lower court's award of summary judgment to a city fire department that disciplined the plaintiff firefighter for his social media posts, the court found that the content of the firefighter's posts was "personal." The firefighter had complained that the current generation of firefighters were composed of "softies" who need to "toughen up." As a result, the *Dunn* court found that the plaintiff sounded more like a "disgruntled employee" than someone appealing to the public about a matter of public concern. Here, the County will point to the fact that Randall included certain editorial comments in her Facebook posts, such as "Bad Call!!!" and "The county executive needs to get her priorities straight!" This will be used to bolster the County's argument that Randall was not commenting on a matter of public concern and was merely sounding off on a personal vendetta.

However, the *Dunn* court also explained that the plaintiff in that case could have spoken to matters of interest to the public had he "explain[ed] how the new hiring qualifications affect the public" or "show[ed] how the new standards are lax or will lead to unqualified firefighters." Here, the majority of Randall's two posts were dedicated to exactly such purposes: explaining how the non-renewal of the grant would affect the public and showing how the non-renewal of the grant would adversely harm the County. Randall explained what the WRP does, how many residents were assisted, and who residents could contact (Cook) if such residents disagreed with the decision. Notably, Randall also addressed her October 15, 2023, post to "fellow Bristol County residents." On these facts, the content of Randall's social media posts was on a matter of public concern.

The court must also consider the speech's nature and context. Here, Randall can show that the nature of her speech was informative; she provided specific facts about the WRP and its purposes. As noted above, her October 15, 2023, post was addressed to her fellow County residents. Moreover, in assessing the speech's nature, the Fifteenth Circuit in *Smith* considered the fact that the plaintiff "changed his social media settings from private to public." On these facts, Randall made her posts "public," so that the widest possible audience could read them.

On the issue of context, the County will attempt to argue that Randall was acting with an improper motive, namely being upset that her position as director of the WRP was ending. However, Randall has testified that her disappointment with seeing her position end was not the reason she made the Facebook posts; rather, Randall was more concerned with helping residents attain their GEDs and get jobs, a cause she deemed worthwhile.

Thus, the content, nature, and context of Randall's speech establish that she was speaking on a matter of public concern which merited First Amendment protection.

C. <u>While the County May Have Had an Interest in Promoting an Effective Workplace, Such Interest Is Not Present Here</u>

In *Dunn*, the court recognized that a balancing test must be conducted to weigh the employee's interest in speaking against the employer's interest in promoting effective and efficient public service. While such interest is laudable, the facts do not show that the County suspended Randall for such a reason.

In her deposition, Cook testified that Randall was suspended for "not showing respect for [Cook] and [Cook's decision-making authority." When asked to clarify, Cook stated that Randall "embarrassed [her]" and stirred up

the public. A public official being embarrassed by a decision she made does not bear on the such public official's interest in seeking an efficient workplace. Moreover, stirring up the public, and, as a consequence, fielding a dozen or so calls, is within a County Executive's basic job description. It is doubtful the County can show any interest here at all in promoting an effective and efficient workplace because Cook conceded that there were no disruptions or problems in the county office following Randall's posts.

Given that Randall's right to speak must be balanced against the employer's interest in an efficient workplace, which was not at stake on these facts, Randall will prevail in the balancing test set forth in *Dunn*.

D. The County Has Admitted that Randall's Facebook Posts Were a Motivating Factor in Her 2-Week Suspension

The County has conceded that Randall was suspended because of her Facebook posts. The November 4, 2023, letter from Susan Burns, an attorney for the County, stated clearly that "Ms. Randall was suspended because of her Facebook posts." Thus, it is not disputed that Randall's Facebook posts were a motivating factor in her suspension, and she has proven this element of her claim.

For the foregoing reasons, summary judgment should be granted with respect to Randall's § 1983 claim against the County for the violation of her First Amendment rights.

Representative Good Answer No. 2

To: Michael Carter

From: Examinee

Date: February 27, 2024

Re: Randall v. Bristol County First Amendment Claims Assessment

Hello,

Thank you for allowing me to conduct this assessment for you. Please find below me analysis of Ms. Randall's first amendment claims for the Motion for Summary Judgement. Please let me know if you require anything further or if I can be of any further assistance.

I. Captions

[omitted]

II. Statement of Facts

[Omitted]

III. Legal Argument

A public employee does not surrender all First Amendment rights just because of their employment status. Garcetti v. Ceballos 547 U.S. 410 (2006). To show that speech is protected under the First Amendment, a public employee must demonstrate that 1) the employee made the speech as a private citizen and 2) the speech addressed a matter of public concern. Dunn v. City of Shelton Fire Department (15th Cir. 2018). Once it is determined that the employee spoken as a citizen on a matter of public concern, the inquiry moves to a balancing test. Id.

a. Ms. Randall was speaking as a private citizen when she made the relevant social media post and thus her First Amendment rights to Free Speech were violated when she was suspended without pay for two weeks for making the posts.

When a public employee makes a statement pursuant to their official duties, the employees are not speaking as citizens for the purposes of the First Amendment. Garcetti. In order to determine if the employee was making the speech pursuant to their official duties, the question is whether the employee made the speech pursuant to their ordinary job duties. Lane v. Franks, 573 U.S. 228 (2014). Speech is not necessarily made as an employee just because it focuses on a topic related to an employee's workplace. Smith v. Milton School District (15th Cir. 2015). In Dunn the speaker was found to not be speaking as a private citizen because the speaker's job responsibilities were communicating information and updates concerning firefighter qualifications with the fire chief and he posted in a Facebook group consisting of first responders about continuing education requirements and issues for firefighters which mirrored his job responsibilities. Contrast Dunn with Smith where the speaker was found to be speaking as a private citizen because posting on a personal social media account is not a part of the duties of a school teacher.

Here, Ms. Randall was speaking as a private citizen when she made the relent social media posts because posting to Facebook is not a part of her job duties. She posted to her personal social media account, which was not part of her duties as Director of the Workforce-Readiness Program. Nor did the posts mirror any of her other job duties as discussions of the grant renewal was not listed in any of her job duties. She created policies and procedures for connecting participants with other county services and resources, but nothing in her job duties touches discussion of renewing grants. Thus, because the posts were made to Ms. Randall's personal social media account and because the posts did not mirror any part of her job description, she was speaking as a private citizen.

b. Ms. Randall was addressing a matter of public concern when she made the relevant social media posts and thus her First Amendment rights to Free Speech were violated when she was suspended without pay for two weeks for making the posts.

In order to determine whether speech was made about a matter of public concern, the court should consider three things: 1) the speech's content - what the employee was saying; 2) the speech's nature - how the employee spoke and to whom; and 3) the context in which the speech occurred - the employee's motives and the situation surrounding the speech. Dunn. Matters such as school district finances, public corruption, discrimination, and sexual harassment by public employees have been found to be matters of public concern, and a public employee's speech about these matters is protected. Smith. Complaints about work conditions are not public concerns. Id. In Dunn the speaker was found not to be addressing a matter of public concern because his motive appeared personal, he did not explain how the hiring qualifications at the heart of his content would affect the public, and he did not should how the new standards would lead to unqualified firefighters which would be a matter of interest to the public. Contrast Dunn with Smith where the speaker was found to be speaking on a matter of public concern because the speech focused on school policies, rather than personal complaints or issues, the social media posts were accessible to anyone, and he explained how focusing on test preparation can at the expense of other subjects.

Here, the content of Ms. Randall's speech was of a matter that interested the public because it essentially had to do with the county's finances and the administration of those public finances. It was not about personal grievances with her workplace or work conditions. Although she expressed dismay about the grant not being renewed and frustration with the county executive for choosing not to renew the grant, these personal

interjections do not overshadow the fact that the post was, at its core, about county finances, namely the grant, and that posting it was something that would be of interest to the public and likely to concern them. Additionally, the nature of the speech was public. Although the post was posted to Ms. Randall's personal social media account, the posts could be accessed by anyone, they were not limited to library employees or even just those who utilize the library. It was available to everyone. Further, as previously discussed, even though there was an injection of personal feeling on the posts, the posts were not an airing of personal grievances with the county, the library, or the program.

The posts were meant to alert the public about the fact that the grant was not renewed and to bring to the public's attention all the good the program the grant funded had done for the county. Ms. Randall was not concerned with keeping the prestige of her job title, though she admittedly enjoys that, it was about making sure the public could continue to be served by what she saw as a critical public service that was in jeopardy. Thus, the content, nature, and context of Ms. Randall's speech all show that she was speaking on a matter of public concern and thus her speech should be considered as speech addressing a matter of public concern.

c. Ms. Randall had a greater interest in expressing the relevant speech than her employer had in promoting an effective and efficient public service and the speech was the motivating factor in the adverse employment action and thus Ms. Randall is entitled to Summary Judgement on the violation of her First Amendment rights to Free Speech.

The court must weigh the interests of the employee in expressing the speech against the employer's interest in promoting effective and efficient public service. Dunn. For an employee to prevail, the employee must show that the speech was a motivating factor in the adverse employment action. Where there has been positive past performance reviews, the employee can generally show that the speech was the motivating factor for the adverse employment actions. Smith. While it is true that overtime, courts have tended to favor public employers over public employees (Kurtz v. Orchard Sch. Dis. (Fr. Ct. App.

2009)), the balance tilts in favor of an employee calling attention to an important matter of public concern, such as a school district's budget and use of tax revenue (Pickering v. Bd. of Education, 391 U.S. 563 (1968)). In Kurtz, the balancing test weighed in favor of the employer because the speaker, a teacher, posted on social media disparaging students and the court found that such speech was not protected because it eroded trust. Contrast with Smith where the balancing test weighed in favor of the employee because the speech had merely annoyed the employer but had not disturbed morale or efficient operation or caused real issues between the speaker and the employer.

Here, Ms. Randall has a readily apparent interest in making sure the public is advised of the loss of this grant as it is a matter of public concern and she was speaking as a private citizen. She was not attempting to air personal grievances online, she was attempting to apprise the citizens of the county of what was happening with the funds in their county. Ms. Randall's employer, Ms. Cook readily admits that there have been no disruptions or problems in any county office, including the library, so there is no concern for disturbed morale or inefficient operation caused by the speech. Ms. Cook also readily admits that the reason she disciplined Ms. Randall for the speech was because she thought the speech embarrassed her (Ms. Cook) and the county. The court has already ruled that mere embarrassment is not a good enough reason to restrict a public employee's speech. Smith. Indeed, almost all public speech criticizing the government will incur some embarrassment but the First Amendment exists for the exact purpose of allowing citizens to criticize their government, and embarrassment is not a reason to restrict an employee's speech. Id. Finally, Ms. Randall's employer admits that before this incident, there had been no problems with Ms. Randall's work performance and the reason she disciplined Ms. Randall was because of her speech. Consequently, the speech made by Ms. Randall was the motivating factor for her suspension without pay. Thus, the balancing test weighs greatly in favor of Ms. Randall as against her

employer and the speech of Ms. Randall was the motivating factor in Ms. Randall's adverse employment outcome.

IV. Conclusion

Ms. Randall was speaking as a private citizen because posting to social media was not a part of her job description nor did it mirror any part of her job description. Ms. Randall was speaking about a matter of public concern because the content, nature, and context of the speech all point to her addressing an issue of public interest that was not an airing of private grievances, in a digital public forum. Further, the balance of interests weigh greatly in Ms. Randall's favor as she was speaking as a private citizen on a matter of public concern and her employer was merely concerned with the embarrassment the speech would cause her and the county and the speech did not disrupt the work environment. Finally, Ms. Randall's speech was the motivating factor for her adverse employment outcome. In conclusion, her speech was protected by the First Amendment and the Motion of Summary Judgement should be granted.

Thank you again for allowing me to conduct this analysis for you and for allowing me to draft the legal argument section of the Motion for Summary Judgement. Again, please let me know if there is anything I can do to be of further assistance.

Warm regards, Examinee

MEE 1

Representative Good Answer No. 1

1. The issue here is whether Wendy, Mary, and Angelo have formed a general partnership.

A general partnership is established where two entities intend to operate a for-proft business as co-owners. Such a partnership need not be expressly established, and the parties may indicate their intent through conduct. Where parties agree to share profits, there is a presumption that the parties intend to become partners. In the case of relieving a debt, profit-sharing does not presume a partnership.

Here, Wendy operated Kibble as a sole proprietorship, but offered Mary and Angelo the opportunity to join as a partnership. Kibble is a for-profit business. Mary sent Kibble a check, agreed to share 15% of Kibble's profits and losses, and began working at the store and business-planning, demonstrating her intent to operate Kibble as a co-owner with Wendy. Therefore, Mary and Wendy are likely partners in a general partnership. In contrast, Angelo sent Kibble a check, but did not so agree to share in Kibble's profits.

Rather, Angelo agreed to collect 15% of Kibble's profits as repayment of Kibble's debt to him in the amount of the check. Unlike Mary, Angelo did not engage in any activity that would indicate an intent to operate Kibble as a co-owner, and therefore Angelo is not a partner in Kibble.

Mary and Wendy are partners in the Kibble partnership, and Angelo is a creditor to Kibble, but not a partner.

2. The issue here is whether Bob is entitled to Mary's interest in Kibble by virtue of Mary's assignment.

Partners in a general partnership may freely convey their share of interest in the partnership. The beneficiary of this conveyance is entitled to the proceeds from the transferring-partner's interest, but may not exert control over the management of the business unless admitted via unanimous vote of all partners.

Here, Mary has a 15% interest in Kibble's profits, and she validly assigned her share to Bob via a signed writing. Therefore, Bob is entitled to Mary's share of Kibble's monthly profits.

3. The issue here is whether Bob may inspect Kibble's books and records by virtue of Mary's assignment of her interest.

Partners in a general partnership are entitled to inspect the books and records of the business. However, the transferee of a partner's interest is not entitled to exert such control, absent a unanimous vote admitting them as a new partner.

Here, Bob was assigned Mary's 15% share in Kibble. However, Mary did not approve of Bob as a new partner. Since Bob is merely a transferee of a partner's interest, and not a new partner, Bob will not be entitled to inspect Kibble's books.

4. The issue here is whether Wendy is entitled to use the delivery van, as partnership property, for personal uses.

Partnership property may only be used for the purpose of furthering the partnership's business. Such property is classified as items gifted or conveyed to the partnership, or items purchased with partnership assets. If a partner uses the partnership property for personal use, they will have to pay for the use of the property.

Here, Wendy purchased the delivery van using Kibble's assets (accrued from Mary and Angelo's contributions). Therefore, the delivery van is partnership property. Wendy cannot use the delivery van to take her nieces to softball games, since that is not part of Kibble's business of selling dog food. Since Wendy is using the delivery van for personal purposes, she will have to pay for her use.

Representative Good Answer No. 2

1. The issue is what relationships have been formed between Wendy, Mary, Angelo, and Bob through their dealings.

A partnership is formed by two or more parties agreed to operate a business for profit as partners. Establishing a partnership requires far less formalities than other associated entities, like corporations or LLCs. When there is a sharing of profit between individuals there is a presumption of a partnership. However, not all profit sharing results in a partnership. For example, when profits are shared to repay loans, there is no presumed partnership unless expressly indicated otherwise. Generally creditors do not share in the business's losses like partners do. Partners may transfer their rights to a third party but to become a partner the newly proposed partner must receive the unanimous consent of all existing partners. Transferees not brought in as partners have the same rights as the transferor partner, to receive distributions, but do not have the same rights to manage the business.

Here, Wendy asked her friends Mary and Angelo for financial assistance to continue operating Kibble. Both Mary and Angelo agreed and provided money to Wendy for Kibble.

Wendy agreed in a signed writing with Mary to distribute 15% of Kibble profits to Mary, and that they would also share losses. Wendy also began working at the store with Wendy and helped plan the business. Wendy and Mary have formed a partnership through their dealings.

Angelo provided money for Kibble in exchange for 15% of monthly profits, but instead of agreeing to share in profits and losses Angelo's financial support came in the form of a loan. The 15% in monthly profits payable to

Angelo operates to pay off the loan, plus interest, and are only payable until the loan is repaid. Wendy and Angelo have formed a relationship of debtor and creditor. Angelo is not a partner in Kibble.

Mary transferred her partnership interest to her son Ben. Wendy told Mary that she didn't want Bob involved in Kibble so there is no unanimous consent by existing parties to have Bob come in as a partner in Kibble. Instead, Bob is a transferee holding all of Mary's rights in distributions, but as a transferee he is not entitled to the business operations management rights.

2. The issue is whether Bob, as a transferee, is entitled to Mary's 15% share of the monthly profits of Kibble.

A partner may transfer their interest in the partnership to a third party. When a transferor partner transfers their interest they are only transferring their right to distributions and not transferring their full partnership status to the transferee. To be brought in as a full partner full consent is required of all existing partners.

Here, Mary transferred all of her interest in Kibble effective immediately, as a gift. Wendy, the only other partner in Kibble, responded to Mary's transfer, that she didn't want Ben involved in Kibble, thus witholding her consent. Since Wendy does not want Ben to be a partner, Mary remains a partner for purposes of loss sharing and liability but Ben retains the interest in distribution.

Bob, as transferee, is entitled to Mary's share of the monthly profits of Kibble.

3. The issue is whether Bob, as transferee, is entitled to inspect the books and records of Kibble.

As noted above when a partner transfers their partnership interest they are not transferring the full partnership rights, absent full independent partner consent. When the full partnership does not consent a transferee does not retain management rights and has no rights in inspecting the books and records of the partnership.

Here, since Wendy has not provided her consent to bring Bob in as a partner Bob has limited rights as a transferee. As such, Bob is not entitled to inspect the books and records of Kibble.

4. The issue is whether Wendy's personal use of the Kibble delivery van violates her duties to the partnership.

Partners are agents of the partnership and thus owe the partnership and other partners fiduciary duties. In general, a partnership agreement is the law of a partnership. Partnership agreements can expand, and in some reasonable cases limit the scope of partners fiduciary duties. In the absence of a partnership agreement states have instituted default rules which govern the operation of a partnership. These default laws impose duties that include the duties of care and loyalty. The duty of loyalty requires partners to not use partnership property for personal benefit. While partners have equal rights to use partnership property, within normal operations, they may not do so to benefit themselves personally.

Here, Wendy is using the Kibble deliver van for personal use; to take her nieces to their softball games on Sunday's. Wendy is using the van, partnership property, for personal benefit with no remote purpose or value realized by or for Kibble. Furthermore, Mary, the only other partner in Kibble, has asked Wendy to discontinue this use.

Since Wendy's use of the delivery van is personal in nature, not being done with full partnership approval, and in the absence of a partnership agreement that makes this permissible, Wendy's use is a violation of her duties and she is not entitled to using the delivery van on Sunday's to take her nieces to their games.

MEE 2

Representative Good Answer No. 1

This essay is governed by the rules of the UCC. The UCC governs items in a contract that are moveable goods at the time identified in the contract. Here, the painting is a moveable good therefore the UCC applies.

1. Breach of Express Warranties a. Agreement terms

The issue is whether the portion of the contract that identifies the painting as a "painting by Artise" constituted an express warranty.

An express warranty is a warranty about a good that purports a to guarantee something about a goods condition. Here, the express warranty in the agreement is that the painting is by Artise (an original). Since the painting is not an Artise, then the grandson breached the express warranty because it is a counterfeit.

Thus, the grandson breached an express warranty.

b. Disclaiming an express warranty

The next issue is whether an express warranty can be disclaimed in a contract. Generally, an express warranty cannot be disclaimed in a contract.

Here, the agreement between the grandson and the buyer contains a disclaimer clause that states that the seller disclaims all warranties, express or implied. However, express warranties about a products condition cannot be disclaimed.

As such, the disclaimer clause in the contract should have no legal effect with regard to the express warranty.

2. Buyer's Right to Rescind or avoid the contract on the basis of mutual mistake of fact.

Mutual Mistake:

The issue is whether a mutual mistake existed at the time the contract was entered into.

A mutual mistake is a mistake of material fact on which the contract is predicated or relies on to be true, but is false, and both Parties had a good faith belief that the fact was true.

Here, both parties were mistaken as to the fact that the painting was a real Artise. At the time the contract was entered into, the grandson had consulted with appraisal experts and the buyer was permitted to and actually visually examined the painting for 30 minutes. A material fact on which the contract was predicated on was that the painting was a real Artise. Here, it turned out to be fake and both parties were mistaken regarding that material fact. The facts also indicate that both parties believed in good faith that the painting was a genuine work.

Therefore, a mutual mistake mistake of fact existed.

Remedy:

The issue is whether the remedy for a mutual mistake of fact is rescinding the contract or avoiding the contract.

The remedy for a mutual mistake of fact is a recission of the contract. A mutual mistake of fact indicates means that contract formation was flawed, thus mutual assent was not reach because the basic facts relied on to enter the agreement are not true.

Therefore, buyer may rescind the contract as if it never existed.

Representative Good Answer No. 2

(#1)

The UCC governs the sales of moveable goods. Moveable goods can be picked up and transported. Here, the painting, is the subject of the contract and is a moveable good as it can be picked up and transported. Therefore, the UCC governs this sale.

Under the UCC, an express warranty is a promise made by the seller that the good in question conforms to the standards of the good. An express warranty cannot be disclaimed even if the Agreement states otherwise. Here, the Grandson made an express warranty that the painting was a "painting by Artiste". The painting was not a painting by Artiste thereby breaching Grandson's express warranty to Buyer. Even though Grandson attempted to disclaim the express warranty in the agreement. This disclaimer is not allowed under the UCC, which rendered the disclaimer useless. Therefore, Grandson breached his express warranty to Buyer that the painting was by Artiste.

(#2)

Under the UCC, mutual mistake of fact is a defense to contract when both parties misunderstand a material fact of the contract by no parties' fault. Here, Grandson was not a merchant in the ordinary course of collecting or selling rare paintings. Rather Grandson did not have an interest in paintings and was not knowledgeable about paintings, the collection was merely a gift he inherited. Grandson hired a group of experts to catalog the paintings for him and was told the painting was an early work of Artiste. Grandson could reasonably rely on this belief as they were the experts on paintings and he was not. Therefore he had an honest mistake of a material fact as the agreement's main subject was to buy this specific painting by Artiste.

Buyer also had a mistake of fact. The Buyer honestly believed the painting was by Artiste after inspection. Even though the inspection was only 30 minutes long this does not reduce Buyer's liability in the mistake because the only was to know if the Artiste was a fake was by submitting the painting for chemical testing. Moreover, neither party could have known about the fraudulent paintings as the contract was formed three weeks prior to the news article describing the fraudulent Artiste paintings that would have put either party on notice to submit the painting for a chemical test. As the Contract formed with a mutual mistake of material fact, the Buyer is able to avoid the contract.

MEE 3

Representative Good Answer No. 1

1. Judicial notice is when a court takes notice, without the necessity of proof, of certain adjudicative facts. A court may take judicial notice of well-known facts in the jurisdiction of the court, or facts that emanate from sources of unquestionable accuracy. Examples of the latter include radar, public records from government agencies e.g. the certified public record from the federal government's National Weather Service agency in this case. Although a fact judicially noticed by the court needs no proof, a party opposing the

taking of judicial notice by the court is entitled to present arguments to the court why judicial notice should not be taken of a particular fact. In this case, Dana was entitled to ask for the opportunity to present an argument

that taking judicial notice would be improper, and the trial court erred by not affording an opportunity to be heard before taking judicial notice of the weather on October 18.

2. As indicated above, a court may take judicial notice of facts from sources of unquestionable accuracy. The certified public record from the federal government's National Weather Service agency indicating the weather for October 18 is one of such sources. The trial court did not err by taking judicial notice of the weather on October 18.

3. The Federal Rules of Evidence prohibit the admissibility of character evidence, except in limited circumstances, when offered to prove that a person acted in conformity with that character trait in a particular instance. In this case, the Dana's testimony that Cara was "careless" was offered to prove that Cara carelessly lost her cell phone at the gym. It was offered to prove that Cara behaved in conformity with her alleged "careless" character trait in losing her cell phone. The testimony is inadmissible character evidence.

4. The Federal Rules of Evidence permit the admissibility of evidence of habit i.e. the evidence that a person acted in conformity with that habit on a particular occasion. Dana's testimony that Cara often misplaced or forgot her cell phone is habit evidence i.e. that Cara acted in conformity with the habit of misplacing or forgetting her cell phone. This evidence is not character evidence. It is evidence of habit, and is, therefore, admissible.

Representative Good Answer No. 2

1. Opportunity to be heard prior to judicial notice being taken.

The issue is whether Dana was required to be afforded an opportunity to be heard prior to the court taking judicial notice of the weather on October 18. Generally, an opportunity to be heard is not required for a court to take judicial notice and accept a fact as true upon a sufficient foundation being laid.

Here, Cara requested that the court take judicial notice as to the weather on October 18. Cara offered a certified public record from the National Weather Service as evidence to establish the fact as true. The judge need not give Dana an opportunity to be heard or to rebut the evidence offered by Cara because the record is a certified public record from a federal government agency. No opportunity to be heard on the issue of judicial notice is required because the facts must be easily identifiable as true.

Therefore, the trial court did not err by denying Dana an opportunity to be heard before it took judicial notice of the weather on October 18.

2. Facts for which judicial notice may be taken.

The issue is whether the trial court permissively took judicial notice of the weather on October 18. Generally, a court may take judicial notice of collateral facts generally known within the jurisdiction or collateral facts that are easily verifiable as true. Hence, a court may not take judicial notice of a fact of consequence to the action or one that is not easily verifiable. In a civil action, judicial notice is conclusive proof of the existence of said fact.

Here, Cara offered evidence that would likely be sufficient to establish that the facts as Cara described them are true because she offered a certified public record from the National Weather Service agency. This would likely be sufficient for a court to take judicial notice in a civil action if the fact was not material to the outcome of the case. The issue of what the weather was on October 18 is a material fact to the case, however, because the identity of the cell phone thief is based on what Cara observed the thief to have been wearing outside of her locker when her cell phone went missing. The certified public record offered by Cara typically would be sufficient to take judicial notice of the weather on October 18, but since the parties dispute the weather conditions of that day and the fact of the weather conditions on that day is material to the claim, the court should have declined to take judicial notice and weighed the credibility of the witnesses.

Therefore, the trial court erred by taking judicial notice of the weather on October 18.

3. Opinion of Character in Civil Matters.

The issue is whether Dana's testimony that Cara is "pretty careless" constituted inadmissible character evidence. Generally, character evidence is only admissible in civil matters where character is an essential element of the claim, such as negligent entrustment, defamation, and child custody. Otherwise, character evidence to show that a person acted in conformity with such character trait is inadmissible. Opinion testimony may be admitted if the opinion is rationally based on the witness's perception and helpful to the trier of fact.

Here, Dana's testimony that Cara was "careless" was offered to show that Cara acted in conformity with Dana's opinion that she is careless. The claim in issue is not one of the civil claims that permits evidence of character as an essential element. Dana must have personal knowledge of the substance of the testimony for it to be admissible and as Cara's co-worker, Dana likely has a valid basis for forming her opinion that Cara is careless. Dana may not offer the testimony to prove that Cara did in fact act carelessly and misplace her phone. However, character is not an essential element to this civil claim.

Therefore, Dana's testimony that Cara was "careless" does constitute inadmissible character evidence since it is being offered to prove that Cara acted in conformity with that character on the day in question.

4. Testimony Regarding Conduct to Prove Character.

The issue is whether Dana's testimony that Cara often misplaced or forgot her cell phone is inadmissible character evidence or if it is evidence of habit or routine. For character evidence to be admissible as proof of habit or routine, the conduct being testified to must be an actual habit or routine of the person being described. It is, for example, permissible evidence of routine or habit to testify that the person spends every Monday at their mother's house and walks her dog. Evidence of routine or habit is presumptively accurate because the acting party always engages in the conduct on a routine and regular basis in response to the same stimuli.

Here, Dana's testimony that Cara often misplaced or forgot her cell phone is insufficient to establish a routine practice or habit by Cara. The testimony does not establish that Cara, without fail, at a specified time or in response to a specific stimuli, always misplaces or forgets her cell phone. Instead, the testimony is inadmissible character evidence because a presumption that Cara acted in accordance with the conduct described cannot be established. Dana's testimony is her opinion rather than evidence of routine or habit to prove Cara's character and cannot be offered to prove that Cara acted in accordance with that conduct.

Therefore, Dana's testimony that Cara often misplaced or forgot her cell phone is inadmissible character evidence.

MEE4

Representative Good Answer No. 1

1. Issue is whether, under the minority rule, Tom could rightfully terminate the lease because Helen held over on January 1, 2021.

Under the minority rule, the landlord had to provide the tenant with both physical and legal possession of the property upon the start of the lease term. If the landlord was unable to provide both of those, then the tenant was able to terminate the lease

Here, Tom could rightfully terminate the lease because the landlord failed to provide him with physical possession upon the start of the lease on January 1 and only provided legal possession through the lease agreement.

2. Issue is whether, under majority rule, Tom would be able to terminate the lease because Helen held over on January 1, 2021.

The more modern approach and majority rule states that a landlord is only required to provide the tenant with legal possession of the property upon the tenant moving in. The landlord has to provide physical possession within a reasonable time upon the start of the lease term.

Here, Tom would not be able to rightfully terminate the lease because the landlord provided Tom with legal possession upon the start of the lease term after Tom signed the lease agreement in November 2020. Tom would be unable to prevail under the modern approach because the landlord did provide Tom physical possession within a reasonable time by allowing Tom to move in immediately on January 4.

3. Issue is whether the landlord rightfully consented to Tom's proposed assignment of the lease to his friend.

A landlord has the right to prohibit assignment and subleasing in the lease agreement. The landlord may also restrict the tenant's ability to assign and sublease their lease by requiring written consent by the landlord. Even if assignment/subleasing is prohibited, the tenant may still assign or sublease their property but may be liable to the landlord for damages resulting from such assignment or sublease. A landlord's refusal to accept a tenant's proposed assignment or sublease must be reasonable and cannot be based on some personal prejudice by the landlord.

Here, the landlord conducted a background check on Tom's friend and determined that the friend had a very low credit rating. The landlord's refusal to allow Tom to assign to his friend is reasonable because the friend's low credit may raise concern for the landlord that the friend will be unable to maintain rent payments during their duration of the lease.

Because the landlord's refusal was reasonable and not based on personal prejudice, the landlord rightfully refused Tom's proposed assignment of the lease to his friend.

4. Issue is whether the landlord could rightfully treat Tom as a periodic tenant subject to the provisions of the expired lease.

When the lease agreement is silent as to what will occur if the tenant remains in possession of the property beyond the term, the landlord can either do one of two options:

(1) the landlord can evict the tenant and sue for damages or (2) the landlord can continue accepting rent payments from the tenant, thereby creating a periodic tenancy between the landlord and tenant. If the

landlord allows the tenant to remain and continues to accept payment from the tenant under the new periodic tenancy, the rent must reflect the value from the original lease and cannot be increased as a result of the tenant holding over.

Here, there is no provision in the lease regarding what happens if Tom remained in the apartment beyond his term. Because of the absence of the provision, the landlord can either evict Tom or treat Tom as a periodic tenant and continue accepting rent payments. The landlord can charge Tom $1,3000 a month, regardless of what the current market rate for comparable units, because it is the price that was in the original lease between Tom and the landlord.

Because the lease agreement is silent as to holding over, the landlord may treat Tom as a periodic tenant and continue accepting rent payments pursuant to the original lease agreement.

Representative Good Answer No. 2

1a) The issue is under what law could Tom have rightfully terminated the lease because Helen had held over.

In a majority of jurisdictions, a tenant is entitled to actual and legal possession of the leased premises on the first day of the lease term. It is the landlord's duty to ensure that the leased premises are available for actual and legal possession on the first day of the lease term. If the tenant is prevented from taking or enjoying actual possession at the start of the lease term then the tenant is entitled to terminate the lease because the terms of the lease have been essentially breached by the landlord.

Here, if the leased unit were in a jurisdiction that follows the majority rule, Tom would have been entitled to terminate the lease because although he had legal possession (which occurred on the first day of the lease term), he did not have actual possession because there was a holdover tenant still in the apartment. Since Tom was entitled to actual possession on the first day of the lease term, and the landlord had failed in their duty to get rid of the holdover tenant, the lease contract had been breached and Tom was entitled

to terminate the lease agreement. Thus, under a majority jurisdiction approach Tom would be entitled to terminate the lease.

1b) The issue is under what law could Tom not have rightfully terminated the lease because Helen had held over.

In a minority of jurisdictions, a tenant is only entitled to legal possession of the leased premises. Once legal possession has passed to the tenant, the terms of the lease requiring the landlord to give possession have been fulfilled. The presence of a holdover tenant that prevents actual possession is not a breach of the lease contract and the tenant is not permitted to terminate the lease contract. A holdover tenant does not prevent legal possession.

Here, if the leased premises were located in a jurisdiction that follows the minority approach, Tom would not be entitled to terminate the lease because Tom was given legal possession of the leased premises. The landlord would not be required to give Tom actual possession of the leased premises and the failure to give actual possession did not violate the terms of the lease. Thus, under a minority jurisdiction approach, Tom could not terminate the lease.

2) The issue is whether the landlord rightfully refused to consent to Tom's proposed assignment absent any contractual language that set the standard the landlord would use to assess potential assignees.

If a lease forbids assignments without the consent of the landlord but the lease is silent as to what standard the landlord will use determine whether to give consent, a majority of jurisdiction require that the landlord's decision not be arbitrary, discriminatory, or otherwise unreasonable. A minority of jurisdiction follow the

traditional rule, which is that the landlord can refuse to consent to any assignment for any reason (the reason still cannot be discriminatory but can otherwise be made for any reason.

Here, if Tom is in a jurisdiction that follows the majority approach, the landlord would have rightful refused to consent to Tom's proposed assignment of the lease to his friend. The friend having a low credit rating is a reasonable reason to not allow the assignment to the friend because the landlord could reasonably, whether rightfully, infer from the low credit rating that the friend may be unable to pay rent consistently. Such a reason under a majority of jurisdiction is a reasonable determination and an allowable reason to refuse consent. If the jurisdiction follows the minority approach, the refusal would still be rightful as the landlord would be allowed to refuse the friend for any reason or no reason

at all because under the minority approach no reason is actually needed to refuse consent. Thus, under both the majority and minority approach, the landlord rightfully refused to consent to Tom's proposed assignment.

3)The issue is whether a hold over tenant, turned into a period tenant, can be subject to the same provisions as the expired lease.

When a tenant's term-of-years lease expires but the tenant remains in the apartment, the tenant becomes a hold over tenant. Once the tenant becomes a hold over tenant, the landlord is permitted to treat the hold over tenant as a periodic tenant, which allows for a lease on a month-to-month or some other periodic basis. If the landlord is going to treat the tenant as a periodic tenant they may permissible use the terms of the old lease to be the basis for the periodic tenancy lease. If the landlord wishes to raise the rent in the periodic tenancy lease, they cannot do so simply because the tenant refused to leave. The landlord must still give the tenant notice that they will be razing the rent, usually a full months notice before the end of the lease for a term-of-years that the rent will increase in the periodic tenancy. So long as the lease terms are the same when the periodic tenancy is created, the lease terms will be deemed valid, even if the market rate for a similar apartment is substantially lower at the time the period tenancy was created.

Here, the landlord can rightfully treat Tom as a periodic tenant and can subject Tom's periodic tenancy lease to the provisions of the expired lease. Tom became a hold over tenant when his term-of-years lease expired and then did not vacate. The landlord was then allowed to treat Tom as a period tenant instead of a holdover tenant in order to ensure that the landlord could still collect income on the apartment, which they would not have gotten otherwise because of Tom's holdover. Since the periodic tenancy was created at the expiration of the term-of-years, the landlord was permitted to use the same lease terms in the periodic tenancy lease, even though similarly apartments in the area were being rented for substantially less. That is the risk Tom took by becoming a holdover and the consequences of not vacating when the term-of-years lease was expired. Thus, the landlord can rightfully treat Tom as a period tenant and use the lease terms from the expired lease in the periodic lease.

MEE5

Representative Good Answer No. 1

Question 1

The issue is whether the double jeopardy clause prevents prosecutions by two states for the same conduct. The double jeopardy clause of the US Constitution, incorporated against the States through the 14th Amendment, prohibits the government from putting a defendant "in jeopardy" more than once for the same behavior. The right attaches when a defendant is acquitted or convicted--a hung jury or a reversal on procedural grounds will not bar retrial. In addition, the double jeopardy clause does not apply to prosecutions by separate sovereigns. This means that the Federal Government and the States can both prosecute a defendant for the same behavior.

In addition, the double jeopardy clause does not apply when the defendant is charged for two crimes based on the same conduct--as long as each crime includes an element that the other does not.

Here, the defendant was charged with violating a City ordinance that provides that "any person who assaults another person because of that person's religious expression commits a serious misdemeanor." The defendant pleaded guilty and was sentenced to three days in jail. For purposes of the double jeopardy clause, a guilty plea means that the defendant cannot be subsequently prosecuted by the same sovereign for the same behavior.

Now, State B wishes to prosecute the defendant for the same behavior. State B's statute mirrors the City ordinance, so the conduct covered is the same. (It does not matter, for double jeopardy purposes, that one statute makes his conduct a misdemeanor and the other makes it a felony). However, State B is a separate sovereign. The City conducted the first prosecution, and the City is part of State A. Therefore, the Double Jeopardy Clause does not bar the prosecution. I note that there may be jurisdictional or due process reasons why State B cannot pursue this prosecution. However, any limits on State B's prosecution do not come from the double jeopardy clause.

Question 2

The issue is whether the double jeopardy clause prevents prosecutions by one state and the federal government for the same conduct. The same rule applies as above. Here, the federal government wishes to charge the defendant with a hate crime. The federal offense has an element that the state offense does not (the person must have been acting under the color of the law), but the state offense does not have an element that the federal offense lacks. Thus, the state offense is a lesser included offense, which ordinarily cannot be pursued consistent with the double jeopardy clause. Nonetheless, as explained above, the double jeopardy clause does not bar prosecutions by separate sovereigns. The Supreme Court has held that both the State and the Federal Government can prosecute a defendant for the same conduct.

Question 3

The issue is whether the double jeopardy clause prevents prosecutions by one City and the State in which it sits for the same conduct. The same rule applies as above. Here, the sovereign is the same. Although City A conducted the first prosecution, a City is not its own sovereign; cities are treated as municipal arms of the State in which they sit, thus exercising sovereignty on behalf of the State. Accordingly, City A and State A count as the same sovereign.

The next question is whether State A's statute prohibits the same conduct as the City ordinance. There are two statutes at issue. The first State statute provides that "any person who assaults another person because of that person's religious expression *and thereby causes injury to that person* commits a felony." The state statute has an element that the city ordinance does not: the defendant must injure the victim. However, the city ordinance does not have an element that the statute lacks. Therefore, the city ordinance is a lesser included offense for the state statute, and the state cannot pursue this charge. Again, it does not matter that one statute makes it a felony and one makes it a misdemeanor.

Question 4

The same rule applies as above. The second State A statute provides that "an person who assaults another person with intent to cause injury is guilty of a felony." This statute has an element that the city ordinance lacks: the person must intend to cause injury. The reverse is also true: the city ordinance requires the defendant to act "because of" the victim's religious expression, whereas the state statute applies regardless of the defendant's personal animus. Therefore, each crime has an element that the other lacks, and double jeopardy does not prevent this prosecution. Even though the defendant could have been charged with violation of both

the City Ordinance and the State A assault statute in the original proceeding, this was not required. As long as both charges are within the statute of limitations and any other procedural rules are followed, the sovereign can bring the charges in any order and at any time.

Representative Good Answer No. 2

The Fifth Amendment Double Jeopardy Clause bars another charge after acquittal, another charge after pleading guilty, and multiple prosecutions for the same offense.

In order to determine what the same offense is, the courts uses the Blockburger test, where if one crime contains elements the other does not, then the crimes are not considered the same offense.

Additionally, a court may not seek to prosecute a defendant after he has been acquitted of a crime or plead guilty to a crime if the new charge would be either a lesser included offense or the greater offense. The lesser included offense is one that is entirely contained within the larger offense, it makes up some, but not all of the elements of the larger crime. A defendant can only be prosecuted for the greater offense after being acquitted or pleading guilty to the lesser-included offense if the greater offense did not come to fruition until after the acquittal or guilty plea (for example, a victim of assault dies after the defendant has already pleaded guilty to assault), or if the greater offense was actually charged before the lesser included offense.

If the above are not satisfied, the prosecution will be barred from prosecuting the offenses.

1. Whether State B hate-crime prosecution is barred under the double jeopardy clause

The issue is whether the hate-crime occurred within State B's borders, allowing State B to have the ability to prosecute.

A state has jurisdiction to prosecute crimes that occur in their state, when a substantial portion of the events leading to the completed crime occur in the state, or crimes that are planned in their state with the intent to complete them somewhere else. Additionally, states are given the ability to prosecute crimes that may have already been prosecuted in other states, so long as the state has jurisdiction, in the interest of promoting state sovereignty. A state is allowed to punish people for committing the crimes of their own state and this right is not abridged by the double jeopardy clause.

State B's hate crime statute states that "any person who assaults another person because of that person's religious expression" is subject to punishment. Since the officer assaulted the driver by hitting him in the head with a rock after he was already ridiculed about his religious beliefs, State B could prosecute so long as they are not barred by double jeopardy.

While the actions leading to the injury of the driver occurred in State A, the driver was actually injured in State B. Additionally, there is evidence that the officer intended the driver to run towards the boarder in an effort to avoid liability from State A. However, since the actual injury occurred in State B, State B is allowed to prosecute the officer for violating their hate crime statute.

2. Whether federal hate-crime prosecution is barred.

The issue is whether the federal government is barred by the double jeopardy clause from prosecuting.

Similar to state sovereignty, the federal government also has the ability to separately prosecute federal crimes even if a defendant has already been prosecuted for a state crime. The federal government has its own interest in prosecuting its own crimes. Prosecutions of this type are not barred by the double jeopardy clause.

Therefore, the federal government is not barred from prosecuting the defendant for acting under the color of law when assaulting the driver for his religious expression.

3. Whether the State A hate-crime prosecution is barred.

The issue is whether the City Criminal charge is a lesser included offense off the State A hate-crime charged and is therefore barred under double jeopardy.

A lesser-included offense is an offense that fits completely within another, larger offense. As mentioned previously, the double jeopardy clause bars the prosecution of a greater included offense if the defendant was either acquitted or plead guilty to a lesser-included offense. The only exception to this rule is if the greater included offense was charged before the lesser-included offense or if the greater included offense did not become available to be charged until after the defendant was acquitted/plead guilty.

The State A hate-crime provides as follows: "any person who assaults another person because of that person's religious expression and thereby causes injury to that person commits a felony punishable by one to five years in prison." The City Criminal ordinance provides that "any person who assaults another person because of that person's religious expression commits a serious misdemeanor punishable by up to six months in jail." The City ordinance is a lesser-included offense of the State A hate-crime statute because all the city ordinance requires is an assault of another person because of that person's religious expression. The State A hate-crime statue requires the exact same type of assault, only adding on the injury requirement. Since the officer already plead guilty to the city ordinance chare, he cannot be prosecuted for the State A hate-crime statute unless an exception applies.

State A did not bring charges against the officer for the hate crime charge before the City did, the first exception is not satisfied. Additionally, the injury was already known at the time of the city prosecution, which meant there has not been a change in circumstances that would make the hate-crime charge suddenly available. Because the State failed to bring this charge first, they are barred from prosecuting the officer under the double jeopardy clause.

4. Whether the State-A assault prosecution is barred by the double jeopardy clause.

The issue is whether the State A assault statute is the same offense as the city ordinance.

As mentioned previously, the Blockburger test is used to determine whether two offenses are the same for the purpose of double jeopardy. If one of the offenses contains elements that the other does not, they are not considered the same offense for the purpose of double jeopardy.

The State A assault statute says that "any person who assaults another person with intent to cause injury is guilty of a felony . . ." The city ordinance requires that a person is assaulted due to their religious belief and has no requirement of intent to cause injury. Since the two offenses both contain elements that the other does not,

they are not considered the same offense and therefore prosecution of the State A assault charge is not barred by the double jeopardy clause.

MEE6

Representative Good Answer No. 1

Regarding the 300 shares of ABC Corp common stock, the distribution of these shares will go to Donna per the will entered in 2010, even though the will did not include the later incurred dividend shares of 100, there is enough intent provided in the executed will to determine that the Testator intended for her cousin to receive these.

Regarding her home, Edward, her brother will inherit it in accordance with the will but subject to the mortgage, which he can assume and continue payments, however, if he does not wish to assume the mortgage or fails to make payments, the home can be sold to pay off the mortgage holder or the mortgage holder can foreclose on the property and satisfy its debts with the proceeds. Edward can, however, proceed against the personal property residuary of Testator's to pay off the mortgage on the property so that he may inherit the home free and clear of all debts.

Regarding her piano, since Faye, her sister, predeceased Testator and Faye was to inherit the piano and Testator failed to update her 2010 will since the passing of Faye, the piano and the $10,000 insurance claim money for the damages to the piano will devise by intestacy of Testator. The piano will devise by intestacy to her daughter, Harriet in 1/2 interest with the son of George, Isaac, since George, Testator's son, predeceased her. The

$10,000, as personal property in the estate that isn't accounted for in the will, will also devise by intestacy in 1/2 interest each to Harriet and Isaac. Due to lapsed shares/gifts rules within the UPC, the $30,000 advance against inheritance that Testator advised George of prior to either's death would not apply to George's successors.

Regarding the $200,000 in cash, this will devise by intestacy and will first pay off the debts of the Testator's estate, which, at the time of her death, the mortgage loan on her home that Edward will inherit. Up to $125,000 can be used of these personal funds to pay off the mortgage of the property, leaving up to $75,000 left to go to Testator's descendants by intestacy: Harriet and Isaac in 1/2 interest each. Isaac receives the 1/2 remainder after Harriet's 1/2 inheritance as the direct offspring of Testator. Under the old per stirpes distribution, all intestate property would be divided among the children of Testator if any survive, in which case, Harriet does, and she would receive 1/2 while her deceased brother's 1/2 would go to his child, Isaac.

Representative Good Answer No. 2

The UPC Guidelines

The UPC was created in a significantly more forgiving manner than the common law. Its goal was to ensure that, even if there is not strict compliance in will, the will can still be valid and assets may be given based on the wishes of the testator. Among its provisions, the UPC created anti-lapse statutes. These state that if a testator leaves a close relative something in her will, but the close relative dies before the testator, instead of escheating to the estate the devise will be given to the close relative's heir. This applies so long as the deceased relative has a living heir at the time of the testator's death. An heir is a child, grandchild, great grandchild, etc.

Similar to anti-lapse, the UPC has rules protecting a devisee when the property they were supposed to be devised is no longer in existence upon the testator's death. The devisee need not be a close relative for this to

apply. In such cases the devisee may receive the estimated value of the property that is no longer in existence, or, if the testator used profits from sold property to purchase something else, whatever the testator purchased with said proceeds (ie. sold one car to get another car). The item must be a specific gift that is readily ascertainable.

A. Sister - Faye's Estate

Here, Faye predeceased testator. They had a close family relationship because they were siblings, so the anti-lapse statute will apply. Further, because the piano was destroyed and the insurance provided a $10,000 to testator as a result, the gift in which she was given was destroyed, but the proceeds are ascertainable. However, because Faye did not leave any heirs at law in the form of children or grandchildren (etc), Faye's estate has no one in which testator's gift may pass to. As a result, the gift of the piano and the subsequent $10,000 will pass to testator's residuary estate.

B. Cousin - Donna

A testator that devises shares allows the devisee to receive the shares and any amounts in which the shares have increased in value. These increases are seen in dividends distributed by the company to each of its shareholders. For purposes of estate planning, dividends are not considered separate from the original shares. If any additional shares are given as dividends, those new shares are also considered dividends and are not separated from the original shares in which they came about.

Here, the testator left Donna 200 shares of ABC stock. The remaining 100 shares of ABC stock given as a dividend are considered part of the 200 shares of stock. They are merely an increase in value of the original shares and thus not divisible from the original 200 shares. The 100 share dividend given is not considered separate from the original shares. Thus, Donna will take the entire 300 shares of ABC stock.

C. Brother - Edward

If a testator leaves property in which there is a loan attached, the loan does not disappear at the testator's death. It carries into the testator's estate and it is the duty of the executor of that estate to pay the debts accordingly. If a gift devise has a loan on it, such as a mortgage on a home, the gift passes to the devisee along with the loan. It is up to the executor to pay the loan from the estate if possible. However, the devisee takes the property subject to the loan regardless.

Here, Edward was gifted testator's home which had 11-12 years remaining on a $150,000 loan. There was likely around $75,000 or so left on the life of the loan. The estate is directed to pay all of the outstanding debts on the testator's behalf, even despite the will's provisions. Thus, Edward will take the home subject to the loan, but he is entitled to ask the executor to pay the outstanding loan amount which, as previously noted, is likely around $75,000 or so. This can easily be completed with the $200,000 in cash and the

$10,000 from the piano insurance proceeds, with the remainder going to the residuary estate. Thus, Edward is still entitled to the home and to ask the executor to repair the remaining balance on the loan.

D. Son - George's estate;

A testator may give an advancement of their estate to a devisee. The advancement must be in writing and acknowledged by the party receiving the advance. Otherwise, the gift is merely a gift and not an advance of a devisee's share in the testator's estate.

Testator gave George $30,000 and later told him it was an advance of his inheritance. However, George did not acknowledge the $30,000 as an advancement to his inheritance, nor did he accept it in 2020 as such. As a result, the 2023 letter to George stating the terms of the advance was not valid nor enforceable. Isaac will take his share under the UPC's generally accepted per stirpes at each generation.

E. Grandchild - Isaac AND Daughter - Harriet

In modern law, the preferred method of intestate distribution of assets is done by per stirpes at each generation. This ensures that each generation is not disadvantaged by the amount of siblings they have, which happens often in per stirpes situations. General per stirpes finds the first line with a living heir and then divides the estate ONLY among those in that line that are still living when the testator dies. Per stirpes at each generation considers a predeceased heir that would have taken and passes their inheritance to their heirs at law, if they have any. If they do not, it passes to the others in that line as if that person did not exist.

Here, testator was survived by her daughter Harriet and her grandson Isaac. She did not state who should get her residuary. Thus, it will pass by intestacy laws. Since the residuary estate passes to testator's heirs as per stirpes at each generation, the residuary estate will pass 50% to Harriet and 50% to George, but since George predeceased testator and is survived by his son Isaac, Isaac will take the other 50% his father would have inherited. Thus, the residuary will be 50/50 to Harriet and Isaac.